

Land: Territory, Domain, and Identity

A report submitted by the WB-IOM technical team
to the Transitional Justice and Reconciliation Commission (TJRC)



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Foreword

The World Bank (WB) and the International Organization for Migration (IOM) have been working alongside the government and other partners for decades to support growth and stability in Mindanao.

Both our organizations appreciate that historical injustice is at the core of Mindanao's peace and development challenge. This is recognized in the 2014 Comprehensive Agreement on the Bangsamoro between the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF). And it was reaffirmed by His Excellency President Rodrigo Roa Duterte in his first State of the Nation Address when he noted that, "There's a historical injustice committed against the Moro people. We have to correct it."

The GPH and MILF established the Transitional Justice and Reconciliation Commission (TJRC) with a mandate to correct these historical injustices. The TJRC identified marginalization through land dispossession as a key concern. It established a Study Group comprising esteemed experts from within and outside Mindanao to undertake a study and identify recommendations to address this issue.

The World Bank and the International Organization for Migration were privileged to have been invited to support the TJRC's work. This technical report, *Land: Territory, Domain and Identity*, is our contribution to the study group. It informed the overall TJRC report that was released in March 2016 and the Land Study Group's own report that is being issued in parallel with this one, *Dealing with the Past and Land Dispossession in the Bangsamoro*. We thank the entire TJRC team for their confidence in our respective institutions and the collegiality of our working relationship.

Land lies at the intersection of peace and development in Mindanao. Injustice and unjust dispossession of land – combined with confusing and overlapping legal and institutional frameworks for land administration and management – are a major trigger of violent conflict. And the lack of security of tenure is a hindrance to much-needed investment that can generate jobs and increase incomes in what remains an agrarian economy.

While this report captures a narrative of historical injustice, contemporary dimensions of the problem, driven by local politics and resource conflicts must also be addressed. The report draws on local and international examples of success to lay out recommendations to try to deal with the problems both of the past and the present.

This report is the second joint WB-IOM output on land conflict in Mindanao, building on a 2013 scoping mission. This has been a productive and constructive partnership that we hope to continue in the future to help the government and other partners to implement the recommendations of this and the TJRC report to help the people of Mindanao move forward to a future of stability and prosperity.

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Preface

As chairperson of the Transitional Justice and Reconciliation Commission (TJRC), it is my pleasure to present the report “Land: Territory, Domain, and Identity”, prepared by the World Bank and the International Organization for Migration on behalf of the TJRC Study Group on Marginalization through Land Dispossession. The current report is of a decidedly technical nature and addresses the issue of land dispossession in the Bangsamoro from a technical perspective. As such, it complements the TJRC report on “Dealing with the Past and Land Dispossession in the Bangsamoro”, which focuses more on policy recommendations.

The TJRC is disseminating these two reports together as an important outcome of the in-depth research and recommendations that emerged from the year-long consultation process which the TJRC conducted in accordance with its mandate. The TJRC wishes to thank the World Bank and International Organization for Migration for this outstanding cooperation.

The publication of this report is intended to supplement and substantiate the findings and recommendations of the March 2016 TJRC Report and, at the same time, to serve as an impetus to the Government of the Philippines and the Moro Islamic Liberation Front to implement the recommendations of the TJRC Report and to continue to engage in the process of normalization.

Ms. Mô Bleeker

Chairperson

Transitional Justice and Reconciliation Commission

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Acronyms and Abbreviations

A&D	Alienable & Disposable
AD	Ancestral Domain
AFP	Armed Forces of the Philippines
ARB	Agrarian Reform Beneficiary
ARMM	Autonomous Region in Muslim Mindanao
BASULTA	Basilan, Sulu, and Tawi-Tawi
BBL	Bangsamoro Basic Law
BCMS	Bangsamoro Conflict Monitoring System
BIAF	Bangsamoro Islamic Armed Forces
CAA	Conflict Affected Areas
CAB	Comprehensive Agreement on the Bangsamoro
CADC	Certificate of Ancestral Domain Claim
CADT	Certificate of Ancestral Domain Title
CARP	Comprehensive Agrarian Reform Program
CBFMA	Community Based Forest Management Agreement
CCCH	Coordinating Committee on the Cessation of Hostilities
CLOA	Certificate of Land Ownership Award
CSO	Civil Society Organization
DAR	Department of Agrarian Reform
DARAB	DAR Adjudication Board
DENR	Department of Environment and Natural Resources
FAB	Framework Agreement on the Bangsamoro
FMB	Forest Management Bureau
GPH	Government of the Philippines
IFMA	Integrated Forest Management Agreement
IOM	International Organization for Migration
IP	Indigenous Peoples
IPRA	Indigenous Peoples Rights Act
LAM	Land Administration and Management
LRA	Land Registration Authority
MAPAD	Mindanao Action for Peace and Development
MILF	Moro Islamic Liberation Front
MNLF	Moro National Liberation Front
MTFRU	Maguindanao Task Force for Reconciliation & Unification
NaTuLaRan Mu	Nabalawag, Tugal, Lower Glad, Rangaban, Nes & Mudseng Alliance
NAMRIA	National Mapping and Resource Information Authority
NCIP	National Commission on Indigenous Peoples
PNP	Philippine National Police
RRUC	Regional Reconciliation and Unification Commission
RHRC	Regional Human Rights Commission
RRUC	Regional Reconciliation and Unification Commission
TJRC	Transitional Justice and Reconciliation Commission
TLA	Timber Licensing Agreement
UNYPAD	United Youth for Peace and Development Incorporated
VOS	Voluntary Offer to Sell
WB	World Bank

Executive Summary

A. Background

1. **It is acknowledged that conflict over land is a major source of violence in various parts of Mindanao, particularly the proposed Bangsamoro region.** Historical accounts trace the root cause of land issues and identity-based conflict to the introduction of the Regalian doctrine of land ownership by Spanish colonizers. During the American colonial regime at the turn of the 20th century, dispossession of land held by the original inhabitants of Mindanao accelerated, with an emphasis on titling lands for private ownership that clashed with the tradition of ancestral domain. This was further exacerbated by migration instigated by the central government, starting with the development of “agricultural colonies” in the early 1900s to 1940s, to the passage of a series of land reform laws from the 1960s until the end of the 1980s to encourage individual land titling as a strategy for agricultural development. These events radically altered land ownership patterns in Mindanao, as communal ownership of land by its original inhabitants gave way to individual titles in the possession of settlers from Luzon and the Visayas.
2. **The quest to reclaim their ancestral domain remains central to the Moro cause.** In its struggle of the 1970s and 1980s, the Moro National Liberation Front (MNLF) asserted a claim to 14 provinces of Mindanao (out of 24 at that time) and Palawan as part of their ancestral domain. The concept of ancestral domain does not centrally appear in the October 2012 Framework Agreement on the Bangsamoro (FAB) or the March 2014 Comprehensive Agreement on the Bangsamoro (CAB) between the Moro Islamic Liberation Front (MILF) and the Government of the Philippines (GPH). However, the Agreements make a number of commitments with regard to land administration, the management of disputes over land and addressing unjust dispossession.
3. **A Transitional Justice and Reconciliation Commission (TJRC) was created by the GPH and MILF negotiating panels to help address the highly complex nature of the land problem in the proposed Bangsamoro territory.** Specifically, the TJRC was tasked to undertake a study and make recommendations to promote healing and reconciliation of the various communities affected by the conflict, including the issue of land dispossession¹. In pursuit of its mandate, the TJRC created four study groups, including one on Marginalization through Land Dispossession. The TJRC then signed an agreement with the World Bank and the International Organization for Migration (IOM) to establish a technical team in support of the Land Study Group. This report summarizes the findings and recommendations of the WB-IOM Technical Team.

¹ The others are on (a) Historical Injustices; (b) Human Rights Violations; and (c) Legitimate Grievances.

B. Findings

Waves of Dispossession: Historical Account

4. **Dispossession of the original inhabitants of Mindanao came in four waves: (a) from 1898 up to the Commonwealth period; (b) 1946 up to the late 1960s; (c) 1970s up to the mid-1980s; and (d) the late 1980s up to the present.** Each of these waves was characterized by a different set of policy instruments. These instruments were, in turn, driven by the political and economic development agenda of the central government at the time, whether under a colonial or Philippine government.
5. **The first wave (1898 up to the Commonwealth period) laid the foundation for the systematic land dispossession of Moros, IPs and other original inhabitants of the country through:** (a) the affirmation of the Regalian doctrine of land ownership; (b) imposition of the Torrens land titling system; (c) passage of a number of laws that were prejudicial to Moro and IP ownership of land; and (d) the active promotion of settlement of Mindanao by American-owned plantations and Christian settlers from the northern islands to increase agricultural productivity and promote the socio-cultural integration of various ethnic groups in the country.
6. **The second wave (1946 up to the late 1960s) saw a massive influx of northern migrants to Mindanao, particularly areas occupied by Moros and IPs.** This was partly a result of government-sponsored resettlement programs and partly due to spontaneous migration of northern settlers looking to own land in Mindanao. The primary aim was to ease social unrest in the countryside in the northern islands of Luzon and Visayas as a consequence of widespread landlessness and exploitative share tenancy arrangements. Government created a series of institutions specifically mandated to promote the resettlement of Mindanao by northern migrants under its “land to the landless” program. The massive influx of settlers changed the demographic composition of Mindanao. The Moro and IP share of the population in Mindanao plunged from 52 percent in 1903 to 18 percent by 1970.
7. **The third wave (early 1970s up to mid-1980s) witnessed the peak of systematic land dispossession of Moros and IPs, intensifying with the imposition of martial law in 1972.** A vigilante group, the *Ilagâ*, was formed to drive Moro communities off their land, only to be taken over by settlers. The “land to the tiller” program pursued under a series of agrarian reform laws passed during that period legalized the takeover by migrant settlers of lands from their original owners, to some extent. The Marcos martial law administration also granted Timber License Agreements (TLAs) covering hundreds of thousands of hectares of forest land to senior military and government officials and allied entrepreneurs to gain, reward, and consolidate support for the dictatorship. This led to the systematic and widespread clearance of Mindanao’s forests, with particularly devastating effects for indigenous peoples.
8. **As the demographic composition of Mindanao shifted, the settlers began to consolidate political power alongside their growing economic influence.** Settler communities were gradually converted into *barangays*, municipalities, and new provinces. The old Cotabato and Lanao provinces were divided into several sub-units, recognizing that certain areas were now dominated by Christian settlers. The old Lanao province was divided into Lanao del Norte and Sur in 1959. The old Cotabato province was gerrymandered to two provinces in 1967: Cotabato and South Cotabato. Three other provinces, Maguindanao, Sultan Kudarat, and North Cotabato were created out of the old Cotabato province through a Presidential Proclamation

under the Marcos regime in 1973. That same year also saw the separation of Basilan from Zamboanga del Sur, and Tawi-Tawi from Sulu. Thus, having been “minoritized” in their homeland, Moros and IPs faced a rapid diminution of local political power during this period.

9. **The fourth wave (mid-1980s up to the present) further complicated the land ownership and land dispossession situation in Mindanao.** Five factors contributed to this: (a) the passage of a number of land-related laws (i.e., the Comprehensive Agrarian Reform Law of 1988, the Mining Act of 1995, and the Indigenous Peoples Rights Act of 1997) resulting in overlapping claims to the same piece of land; (b) titling of most lands in Mindanao, even in the proposed Bangsamoro area (though subject to validation) as part of the process of modernizing land ownership; (c) establishment of the Autonomous Region in Muslim Mindanao (ARMM) and the creation of a new set of Moro elite who also accumulated large tracts of land while in office; (d) major outbreaks of armed conflict and horizontal conflicts (i.e., clan feuds or *rido*), some of which are triggered by local strongmen precisely for land-grabbing; and (e) growing land scarcity and the cultivation of high-value crops (e.g., oil palm, coffee, cacao, rubber, etc.), which increased land values, triggering a spate of land claims.

Land Dispossession and its Multiple Causes

10. **The commonly-accepted proposition that all northern migrant resettlement of communally-held lands by the Moros and IPs in Mindanao was an act of land dispossession is not fully accurate for a number of reasons.** First, many early settlers, up to the 1950s, were welcomed by Moro leaders. Second, land laws enforced during that time were applied nationally, and also caused the dispossession of other tribes across the Philippine archipelago in favor of more educated and opportunistic members of society. These land laws partly triggered the massive social unrest in the countryside that occurred from the 1930s to the 1950s, when the local communist movement reached its peak. It is also important to note that not only Christians but some Moros, particularly coming from the elite class, were able to title large tracts of land in their names and have engaged in land-grabbing.
11. **Thus, while land dispossession did occur on a grand scale, it was triggered not by a single factor but by multiple causes, acting either separately or in combination.** The five key drivers of land dispossession in Mindanao are: (a) weakness of the state apparatus particularly in terms of land administration and management, leading to the issuance of spurious titles and multiple titles over the same piece of land, to the disadvantage of the weak and excluded; (b) laws, policies and programs that were prejudicial to Moro and IP ownership of land; (c) operation of unregulated commercial interests (i.e., logging and mining) which accumulated thousands of hectares of land at the expense of their original dwellers; (d) cycles of violent conflict (both vertical and horizontal) which have caused regular, large scale displacement; and (e) displacement caused by environmental factors such as flooding and landslides.

Contemporary impacts of displacement

12. **The four waves of dispossession gave rise to profound social, political and economic impacts, leaving a legacy of violent conflict and poverty.** Violent conflict has become a common feature in communities that suffered from land dispossession and displacement. Data from the Conflict Alert System (formerly known

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as the Bangsamoro Conflict Monitoring System), the GPH Coordinating Committee on the Cessation of Hostilities (CCCH), and ARMM for 2011-2014 reveal that contemporary incidence of land-related armed conflict (whether vertical or horizontal) is highest in the old Cotabato region, which was the major resettlement site for northern migrants. The data further suggests that land conflict is worryingly high in Basilan, Sulu and Tawi-Tawi (BASULTA) provinces, but is mostly horizontal in nature (i.e. *rido*).

13. **Accumulated years of land dispossession, displacement, and neglect have also had a debilitating effect on well-being.** The latest small area poverty estimates (2012) show that 45 percent of the population in the proposed Bangsamoro core territory live below the poverty line, compared to 31 percent in all other areas of Mindanao. Further, municipalities and cities with a high reported incidence of land conflict are generally poorer than those without. In the proposed Bangsamoro area, 48 percent of the population in areas affected by land conflict are poor, compared to 44 percent in areas with no reported cases of land conflict.
14. **These waves of resettlement not only “minoritized” Moros and IPs in Mindanao but also intensified ethnic segregation.** Early Christian settlers were widely dispersed in areas occupied by Moros and IPs, promoting regular interaction between different groups. However, as conflict intensified and Moro and IP communities were pushed off their land, Mindanao became segregated along religious and ethnic lines. Statistically there is now only a 20 percent chance that a member of a particular ethnic group (Moro, IP, non-Moro/IP or foreigner) in the study area will meet members of another ethnic group. This level of segregation has engendered misunderstanding and mistrust in many areas.

Formal and Informal Land Dispute Settlement Mechanisms

15. **A range of formal and informal land dispute settlement mechanisms operate in the region to address land issues.** These include state institutions such as: (a) the state justice system, comprising the civil courts, the *Shari'a* courts, and the Barangay Justice System; (b) national government agencies (i.e., the Land Management Bureau and Forest Management Bureau of the Department of the Environment and Natural Resources, as well as the Department of Agrarian Reform, the National Commission on Indigenous Peoples, and the Land Registration Authority); (c) regional government agencies (i.e., DENR-ARMM, DAR-ARMM, and the Office of Southern Cultural Communities); and (d) Local Government Unit conflict resolution bodies. Informal, non-state bodies include: (a) customary/traditional dispute settlement mechanisms found in Moro and IP communities; (b) CSO-managed dispute settlement bodies; and (c) the MILF's shadow *shari'a* courts.
16. **While government is mandated to settle land ownership, this can be complicated, as government itself can sometimes drive conflict.** Trust in government can be low in conflict-affected areas, due to government-imposed discriminatory policies and the ineffective institutional framework of conflicting laws which often pit one legal claimant against another. Further, the bureaucracy has limited coverage, is not immediately accessible, and has complicated procedures. The confrontational nature of litigation also contravenes the social preference for preserving harmony. Combined with the involvement of some government officials in anomalous transactions, many claimants avoid government dispute resolution systems. Therefore, the operation of national government land-related agencies in the Bangsamoro area will need to be significantly reformed before they can play an effective role in settling land disputes.
17. **Non-state systems enjoy local legitimacy and are symbols of cultural identity.** They are low-cost and highly

accessible, but addressing local power imbalances in such institutions is a serious challenge. Their emphasis on keeping the peace can at times avoid the core issue of the land dispute, thus achieving short-term pacification rather than sustainable issue resolution.

18. **An analysis of successful dispute resolution mechanisms in Mindanao identifies some common elements, as follows:** a) the importance of convening all relevant parties to a claim—competing claimants, relevant national and local government agencies, the security sector, community and religious leaders and civil society. This brings all potential issues to the surface while also bringing to bear the technical capacity and authority of the state, the moral legitimacy of community leaders, and the relative independence of civil society; b) the need to painstakingly resolve competing claims plot-by-plot, claim-by-claim, as the story of each dispute can be complex and wholesale solutions are neither legally nor socially feasible; and c) the need to ground dispute resolution in healing and reconciliation to encourage acknowledgement of the historical injustices. Legal literacy can also play an important role in ensuring that community members are aware of their rights and the rights of others.

Prospective Challenges

19. **Implementing measures to satisfactorily address the land dispossession issue will face numerous challenges in the future at different levels, covering natural, legal, normalization and security, and development concerns.** Mindanao's population is estimated to be 21 million as of 2010 (latest official census). The island has a total land area of around 10 million hectares, a third of the Philippine territory. Around 60 percent of Mindanao's land is classified as mountainous and forest areas, meaning that only 40 percent is fit for settlement. This means that 21 million residents live in this limited land area of 4 million hectares, plus areas that are legally classified as forest but have actually been settled. Mindanao's population is estimated to grow at an average of 1.3 percent per annum. At that rate, its population is projected to be around 33 million by 2040. It is worrying to note that the projected population growth over the next 25 years is strongest in ARMM at 1.5 percent. This translates into an additional 1.7 million people in ARMM and nine million more people in the whole of Mindanao by 2040. Without proper land use planning and management and efforts to increase agricultural productivity, initiatives to address land dispossession will offer only a temporary reprieve from the problem.
20. **Land administration and management implications of the CAB and draft BBL.** The various land-related provisions in the CAB and the original version of the BBL largely transfer functions from the central government to the Bangsamoro entity. This presents no potential problem, provided that such powers are exercised within the limits stipulated by the Constitution, especially on the qualification of the applicants and the area limit of the concession or disposition. However, technical standards with regard to land survey, procedures and processes would need to be the same for both governments in order to avoid overlaps, gaps, and other survey errors that may cause unnecessary conflicts on the ground. This would require extensive technical support for Bangsamoro agencies.
21. **The transfer of the land registration function (i.e., Register of Deeds under the LRA) to the proposed Bangsamoro Government will require a comprehensive technical, legal and financial study of its implications.** Central government's Torrens system is a title insurance system with liability/indemnity features that are guaranteed by an Assurance Fund created under Presidential Decree No. 1529. The system

is anchored on the LRA's control and supervision of the Register of Deeds, ensuring that only land titles that are considered as "indefeasible" are registered. Thus, control and supervision of the Register of Deeds and the registration process through "consulta" and other regulations and issuances by the LRA is an essential part of the system and should be guaranteed by any system to be installed by the Bangsamoro Government.

22. **The provisions of the original version of the BBL to IP claims of ancestral domain may be challenged by the IPs.** Under the draft BBL, the determination of traditional possession of land by indigenous peoples would be subject to judicial affirmation. This contravenes the concept of "self-delineation" provided under Republic Act No. 8371, or the Indigenous Peoples' Rights Act (IPRA). Under IPRA, the extent of the ancestral domain claim is adjudicated solely by the National Commission on Indigenous Peoples based on evidence/submission from the relevant IP group. The draft BBL would shift the burden of proof to the IPs to present evidence sufficient to overcome the presumption of State ownership under the Regalian doctrine.
23. **Transitional justice/national dialogue.** The original version of the BBL provides for the creation of a transitional justice mechanism to address the legitimate grievances of the Bangsamoro people. However, the Filipino public in general is unaware of these historical injustices, which is a critical first step towards healing and reconciliation. Without acceptance of past wrongdoings, forgiveness can neither be sought nor granted. Educating the public on what transpired in Mindanao and explaining why Mindanao cannot move forward to peace and development without reckoning with the past to reconcile with the present will be a major challenge.
24. **Imperative of development and normalization.** While the CAB is primarily a political settlement, it commits the parties to intensify the delivery of socio-economic programs for rehabilitation, reconstruction and development, in a manner that respects the Bangsamoro right to freely chart their own political, cultural and developmental destiny. Development planners in the proposed Bangsamoro territory will need to carefully assess different models for agriculture and agribusiness, with a focus on empowering small holders and small farmers in the region. Models that are sensitive to prioritizing small tillers and fishers as the main beneficiaries of agricultural productivity and growth should be explored, all of which will require more stable land tenure arrangements than presently exist.
25. **The "normalization" process under the Comprehensive Agreement on the Bangsamoro also has spatial implications.** Pursuant to the Annex on Normalization, the parties commit to helping conflict-affected communities achieve their desired quality of life. This includes efforts to transform six acknowledged Camps of the MILF into peaceful and productive communities. Some of the land in these areas is subject to competing claims. Thus, government and donor efforts to support the Camps could risk "legitimizing" claims of existing occupants over others. Accordingly, settlement of land-related issues should be seen as an integral part of the normalization process.
26. **Mining, displacement, and conflict.** The country's gold and copper reserves are predominantly found in Mindanao which is estimated to hold around 70 and 62 percent, respectively, of these minerals. In addition, almost 40 percent of Philippine chromite and nickel deposits are found on the island. Thus, it is no surprise that the majority of the large-scale mines in the Philippines (20 out of 38) operate in Mindanao. Mining can be a potential source of growth in the region that could underpin genuine fiscal autonomy for the Bangsamoro entity. However, the entry of large-scale mining or a proliferation of small-scale mining would put additional pressure on land ownership, especially in upland areas where most minerals are found. Particularly for the IPs who bore the brunt of displacement during the heyday of logging between the 1950s and 1970s, there is a real threat of suffering another round of displacement if mining is promoted in the

region. In turn, the likelihood of a resurgence of conflict would increase given the weakness of institutions to enforce regulations and address the social conflict that often emerges in parallel to extractive industries. Should proper environmental safeguards not be put in place and observed, the incidence of natural disasters will rise, intensifying the suffering of the Bangsamoro, particularly those residing in lowland areas.

C. Recommendations

Global Experience and its Relevance for the Philippines

27. **The Philippines is not the only country to face multiple layers of land-related grievances and historical injustices in the context of a peace process.** In the past two decades, a number of countries around the world have attempted to deal with the same challenges. Given the context of the proposed Bangsamoro region, global experience can usefully inform a) the process that will be used to develop the policy to address land-related grievances and historical injustices; b) remedies that will be used to address those grievances and historical injustices; c) institutional structures that could be established and used to implement the policy; and d) the eventual implementation of this policy, which is usually where the biggest challenges lie.
28. **Developing and implementing a policy to address land-related grievances and injustices requires broad political consensus.** This is especially important in conflicts that, like the one in Mindanao, have pitched different ethnic, religious, or national communities against each other and where the post-conflict environment is characterized by identity politics. International experience teaches that in such environments, consensus-building around the solutions to land-related injustices and grievances is almost as important as the content.
29. **Restitution and compensation are the most common remedies. In Mindanao, a combination of these would seem appropriate.** Restitution is identified as the preferable remedy in international policy documents. However, experience from other countries shows that: a) restitution tends to become more complicated the further away in time the land and property losses occurred; b) a careful analysis of the likely conflict impact of restitution is required, given the risk of implementation undermining rather than supporting peace; (c) financial compensation is usually easier to implement than restitution, as it does not require significant changes to the actual land and property situation on the ground. However, securing sufficient funds for restitution is often a major challenge.
30. **In terms of institutional structures, countries have demonstrated a clear preference for the establishment of new and dedicated institutions.** Creating a new institution rather than using existing ones appeals on both symbolic and operational grounds. Establishing a dedicated land and property commission can send a powerful signal that authorities are serious about tackling a legacy of past abuse. Operationally this can also avoid overburdening existing land dispute resolution mechanisms with the exceptional “dealing with the past” caseload.
31. These four elements of process, remedies, institutional structure, and implementation challenges were considered in formulating the recommendations below, which draw on the analysis of the causes and impact of unjust dispossession in Mindanao and relevant international lessons. Overall and specific

recommendations are categorized by priority under two scenarios: (i) “Status Quo”; and (ii) “Upon the Establishment of the Bangsamoro”.

Overall Recommendations

PRIORITY 1 MEASURES

Creating the Institutional and Legal Architecture

- a. **Ensure solid and sustained political commitment.** Dealing with past and recent (if not ongoing) land dispossession in Mindanao will require significant and deep reforms in land management; the provision of (some) reparations and the undoing of (some) past injustices; and a considerable strengthening of the rule of law and good governance more broadly. The scale and impact of what is needed is such that it can only be done with the solid and sustained political commitment of key political actors in Manila and in Mindanao. Creating a new and dedicated institution to deal with land will not be sufficient by itself: such an institution will only be able to carry out its mandate if there is consensus about the general direction among key political, economic, social and cultural actors. So the first step needs to be a solid dialogue and political negotiation among those key actors to forge this consensus and commitment. This should be the priority task of the Sub-Commission on Land Dispossession in the proposed National Transitional Justice and Reconciliation Commission for the Bangsamoro (NTJRCB).
- b. **Invest in good governance in the land administration and management sector.** Good governance in land administration aims to protect the property rights of individuals, commercial entities and the state and centers around transparency, accountability, rule of law, equity and effectiveness. This requires, among other things, investment in staff training and management, as well as the establishment of solid mechanisms to ensure accountability if legal rules and procedures are breached. While it is often challenging to change existing institutional cultures, the establishment of new institutions and the re-engineering of land agencies as recommended in this report can provide a good opportunity to make a new start. However, it is important to ensure that all institutions and entities that play a role in ensuring peaceful land and property relations, whether new or existing, are included in efforts to ensure good governance. Experience has shown that without a clear commitment to and investment in good governance, land administrations tend to falter, especially in post-conflict environments where trust in state institutions tends to be low. This is even more important in regard to mechanisms dealing with past injustices related to land, which can only fully achieve their objectives if accompanied by a broader, serious effort to improve land governance and the rule of law.
- c. **Develop and implement accessible and acceptable dispute resolution mechanisms to address land conflicts at the community level.** Efficient and community-accepted dispute resolution mechanisms are essential to address land conflicts in the Bangsamoro territory. Under the original draft Bangsamoro Basic Law, the regular courts would continue to operate and are expected to decide land rights cases. The ARMM, in collaboration with land administration and management-related national government agencies, may introduce alternate dispute resolution processes that suit community needs as a means to expedite the resolution of land disputes. This alternative

dispute resolution process may eventually be included in the land administration law to be enacted by the Bangsamoro Parliament, once established. It should build on the experience of bodies such as the NaTuLaRan Mu alliance (see **Box 4** on page 66).

PRIORITY 2 MEASURES

Laying the Foundations: Filling Data Gaps and Building National Consensus

- a. This report has highlighted some of the major social, economic, and political impacts of land dispossession in Mindanao. However, it has not been able to fully document and quantify the scale of the problem due to data constraints. Addressing these constraints is a necessary pre-requisite for further action to ensure a comprehensive account of the problem and that solutions can truly help to address historical and contemporary injustices.
- b. **Address the land data gap.** The paucity of land data, the lack of a central repository for land data, and the absence of cadastral surveys in ARMM present a huge challenge to identify lands unjustly acquired. Addressing the data gap is a critical step before comprehensive solutions can be formulated. Thus, it is recommended to carry out a comprehensive survey to map/identify all untitled lands and assess in further detail to what degree existing land titles are overlapping or contradictory. In short, a comprehensive exercise is needed to fill the land data gap and pave the way for an eventual formal recognition of all land tenure rights and the settlement of competing land claims related to historical dispossession in the Bangsamoro area. This would need to be conducted in a conflict-sensitive manner, as the mere act of documenting claims would be seen as a challenge to the status quo, given that many powerful interests benefit from ambiguity.
- c. **Conduct an “Intentions Survey.”** Due to cycles of displacement and waves of dispossession, there are reports that Moros who were displaced are contemplating returning to their communities of origin once an enabling law creating the Bangsamoro is passed. Expectedly, this is creating anxiety among current residents of these places who fear they will be disenfranchised once the Bangsamoro Government is installed. There are reports of Christian groups arming themselves to prevent such an eventuality. That said, the TJRC “Listening Process” (refer to **Annex B**) shows that most respondents recognize that returning to their communities of origin will be complicated and could trigger violence. Accordingly, many suggested that they are willing to settle for reparations. Others propose that a certain portion should be allotted to them while allowing current residents to stay or relocate in portions assigned to them. Whatever the final solutions will be, it is best to have *a priori* determination of the intention of those who were displaced and dispossessed to understand the scale of the problem and the nature of remedies considered acceptable to those most affected. An “intentions survey” would be a critical input in the design of policies and programs to address the needs of the displaced/dispossessed.
- d. **Deeper examination of land and property conflict in the island provinces.** The 2013 joint WB-IOM scoping study highlighted that land conflicts in Basilan, Sulu, and Tawi-Tawi (BASULTA) are different to those experienced in Central Mindanao. The causes of conflict on mainland Mindanao were not evident to the same extent in the islands. In particular there was little settlement from

Luzon and Visayas, and land was less important as a source of wealth in an island economy. In BASULTA, most land conflict is between Moro clans. The Bangsamoro Conflict Monitoring System demonstrates that despite the absence of these factors, land conflict incidence and intensity remains high. External researchers are unable to access the island provinces due to security restrictions. But local universities could be tapped to conduct a more in-depth study to inform government efforts to address land conflict prevailing in these provinces because of their unique land ownership structure and history. This study should include access to fishing grounds for indigenous groups such as the Badjao.

Specific Recommendations

Scenario 1: Status Quo

PRIORITY 1 MEASURES

Creating the Institutional and Legal Architecture

- a. **Policy and Agency for Land Reparation.** The Framework Agreement on the Bangsamoro commits the parties as follows: ‘whenever restoration is no longer possible, the Central Government and the Government of the Bangsamoro shall take effective measures for adequate reparation...’ (Section 6.2). To meet this need, the report recommends the creation of a dedicated Agency to investigate cases of unjust dispossession and adjudicate and/or mediate these cases through restitution and reparations. It should also settle land cases where there are competing claimants holding valid titles to the same property, and reach a solution agreeable to both parties. The Agency will have to agree on a standard valuation formula in cases where reparation is mutually-agreed upon. A reparations fund would need to be established for this purpose.
- b. **Introduce community land rights clarification processes as legitimate and legally admissible.** The frequent absence of basic documentation regarding land rights renders restitution and compensation more complex. However, the absence of documents can be addressed through “social cartography” employing “human archives”, i.e., by employing community-based approaches to establish past or present land use and ownership patterns. While this has been done elsewhere, this can only be used in the Philippines if the necessary laws and regulations are put in place to give the outcome of these processes legal validity.

PRIORITY 2 MEASURES

Creating the political environment: national reconciliation and dialogue around historical injustices and the IP narrative

- a. **Conduct national reconciliation dialogues.** The acceptability of solutions to address dispossession of land will partially depend on whether the general public is aware of the historical injustices committed against Moros and IPs, and can recognize the need to take restorative action for healing and reconciliation in Mindanao. Unfortunately, the vast majority of Filipinos, even policy makers, are unaware of these atrocities as they are insufficiently discussed in historical accounts. An holistic

‘dealing with the past’ approach is therefore key to acknowledge these events through initiatives of historical memory and to engender support for a reparation program for communities affected by land dispossession.

- b. **Listening to narratives of dispossession.** An important element in the process of reconciliation and dialogue is active engagement with different groups affected by the conflict. With respect to land dispossession, there is a particular need to engage with various indigenous peoples communities and to listen to their narratives. As with many Moro groups, their welfare and livelihood has been adversely affected by land dispossession, yet their history is less well known. Acknowledging and including the indigenous peoples’ perspective in the narrative of land dispossession in Mindanao is critical not only with respect to inclusivity, but also to achieve a greater sustainability of proposed solutions.
- c. **Develop publicly accessible archives on land issues.** Archives specifically focusing on land issues should be developed to protect and preserve key documents. The archives should be administered in such a way that they are publicly accessible and, as such, to provide the public with a glimpse of the lives and struggles of Mindanao’s early inhabitants, as well as serve the needs of scholars and researchers to improve their understanding of the history of land tenure and dispossession in Mindanao. The archives can be organized in a decentralized manner and attached to institutions of higher learning, such as the State university system in Mindanao and the Sulu archipelago.

PRIORITY 3 MEASURES

Preventing future forced displacement through disaster risk reduction

- a. **Assess the current and future impact of high-value natural resource exploitation on land use and rights in Mindanao.** Unregulated commercial interests related to natural resource exploitation have been a significant cause of violence, displacement and land dispossession. Should the peace process hold, interest in high-value natural resources such as gold and copper is likely to grow. While this could contribute to economic growth and prosperity and potentially underpin genuine fiscal autonomy for the Bangsamoro entity if well-managed, it also entails significant risks, including risk of further land dispossession. To better understand the prospective impacts – positive and negative – we recommend an assessment on the current and future impact of the exploitation of high-value natural resources on land use and land rights in Mindanao. This could include an analysis of the current mechanisms to protect existing land rights; involve communities in decision-making about new concessions/rights to exploit high-value natural resources; and the resolution of disputes. Recommendations for action should integrate a conflict-sensitive approach to natural resource exploitation in Mindanao and identify possible needs for reform.

PRIORITY 4 MEASURES

Preventing land conflict in the context of normalization

- a. **Ensure coordination between the land administration and the government agencies leading the normalization process.** As noted above, the normalization process under the Comprehensive Agreement on the Bangsamoro commits the parties to intensify socio-economic development, including transforming the six acknowledged MILF Camps into zones of peace and prosperity. Given the potential for land claims in the area of the Six Camps, there will be a need for close coordination between the land administration and management agencies and the government agencies leading the normalization process (including OPAPP, the Department of Social Welfare and Development and the Department of Agriculture). The proposed Sub-commission on Land Dispossession or another separate body should be given jurisdiction to address any land claims related to or affected by the normalization process and especially, the transformation of the former Camps.

Scenario 2: Upon the Establishment of the Bangsamoro (“Priority 2”)

- a. **Adopt policies to address landlessness, land conflicts and dispossession.** The draft BBL stipulates that exclusive powers will be vested in the Bangsamoro Government on the administration and management of lands in the Bangsamoro territory. This power provides a unique opportunity to establish a more efficient and effective land administration system. Re-engineering the system would require changes in both laws and institutional mandates and responsibilities. This would be a complicated process entailing extensive research, significant human and financial resources, close cooperation between land-related national agencies and their Bangsamoro counterpart, and unstinting commitment from the national and Bangsamoro leadership. A policy framework does exist describing (refer to Annex E which provides a detailed summary) how the land tenure situation in the Bangsamoro could be effectively addressed. It involves five major phases, the implementation of which will take many years before a Bangsamoro land administration system could be fully operational.
- b. **Re-design the provision of land administration services.** The current cadastral framework in the Philippines (established under various and conflicting national land laws) does not support a unified parcel reference system. Neither does it provide an overarching structure that underpins land titling, land registration, land taxation and land management. A number of factors has created confusion in the provision of land administration services: a) the dual systems of land titling (direct and indirect granting process); b) the divide between agencies exercising survey, titling and registration functions; c) the overly rigid conventional survey system; and d) the institutional failure to create a common and updatable system of parcel or cadastral indexing that integrates current attributes for the rights held for each land parcel has created confusion in the provision of land administration services. This situation has at times been exploited by those who could benefit from ambiguity and loop-holes in the system. Including public servants.
- c. **Enact a new legal framework for land administration.** To effect this re-design of services, the

Bangsamoro legislature would need to enact a new land administration law. This law could include a new land agency—the Bangsamoro Land Commission—to establish a unified parcel reference system that underpins all land administration functions of the government (i.e., titling, registration, taxation and land management). Moreover, the land administration system should be based on a unified cadastral framework supported by information technology. The objective of a unified system would be to eliminate inconsistent data between government agencies exercising land administration functions.

To this end, the Bangsamoro authorities would need to expand the recently completed cadastral survey delineating political boundaries in ARMM to determine actual land ownership/usage rights and to identify existing competing claims and lands which were unjustly obtained. This would require substantial resources and expertise but is an indispensable first step.

- d. **Clarify legal and operational responsibilities.** A detailed study on how the land registration system of the Bangsamoro Government would operate is needed, as the Torrens system of the Central Government is a State title insurance system with liability/indemnity features. Under the draft BBL, land registration appears to be treated as a mere recording of rights. It is suggested that discussions with the (Land Registration Authority) LRA should be held to thresh out possible problems that could emerge from the shift of this mandate from the central to the Bangsamoro government.

It is also recommended that a serious land reparations database, particularly covering data to be used in legal proceedings, should eventually include cadastral, geo-tagged and community-based participatory mapping sets, as a nested series of models. The feasibility of such an endeavor, however, will require further study.

I.

Introduction



I. Introduction

A. Background

1. **Conflict over land is a major source of violence in various parts of Mindanao, particularly the proposed Bangsamoro region.** Historical accounts trace the root cause of land issues and identity-based conflict to the introduction of the Regalian doctrine of land ownership by Spanish colonizers. During the American colonial regime at the turn of the 20th century, dispossession of land held by the original inhabitants of Mindanao accelerated with an emphasis on titling lands for private ownership that clashed with the tradition of ancestral domain. This was further exacerbated by migration instigated by the central government. This started from the development of “agricultural colonies” in the early 1900s to 1940s, to the passage of a series of land reform laws from the 1960s until the end of the 1980s to encourage individual land titling as a strategy for agricultural development. The combined effect of these policies was to radically alter land ownership patterns in Mindanao, with communal ownership of lands by its original inhabitants giving way to individually titled lands in the possession of settlers from Luzon and the Visayas.
2. **In contemporary times, land grabbing by powerful interests—often local politicians with private armies who also control private sector activity—has become a significant issue.** Displacement due to violent conflict has also seen many people forcibly pushed off their land, with many proving unable to restore their rights once spikes in conflict dissipate.
3. **The quest to reclaim their ancestral domain remains central to the Moro cause. In its struggle of the 1970s and 1980s, the Moro National Liberation Front (MNLF) asserted a claim to 14 provinces of Mindanao (out of 24 at that time) and Palawan as part of their ancestral domain.** While the concept of ancestral domain does not centrally appear in the October 2012 Framework Agreement on the Bangsamoro (FAB) or the March 2014 Comprehensive Agreement on the Bangsamoro (CAB) between the Moro Islamic Liberation Front (MILF) and the Government of the Philippines (GPH), the centerpiece of the Agreement is to establish a new autonomous political entity to replace the Autonomous Region in Muslim Mindanao (ARMM).
4. In recognition of the complex issues surrounding land rights in the region, the CAB and the proposed Bangsamoro Basic Law (BBL) make a number of commitments with regard to land administration and the management of disputes over land.
5. **The FAB includes a specific section on property rights. Section VI (2) of the Agreement states that “vested property rights shall be recognized and respected” while recognizing at the same time that**

the rights of those subject to “unjust dispossession” shall be acknowledged. Where the rights of those unjustly dispossessed can no longer be restored, the FAB commits the GPH and the MILF to “take effective measures for adequate reparation.” Finally, the FAB states that “Indigenous Peoples’ rights shall be respected.”

6. **Subsequent annexes to the FAB detail the proposed powers of the Bangsamoro Government on land administration and management.** The exercise of land management authority is to be a concurrent power between the Bangsamoro and central governments, but will require coordinated long-term engagement between the two parties. Related exclusive powers granted to the Bangsamoro Government include: a) management of ancestral domain, in recognition of indigenous peoples’ right to original titles, or *fusaka inged*; b) adoption and implementation of a comprehensive urban land reform and land use program; and c) as a function of transitional justice, restoration or reparations arising from any unjust dispossession of territorial and property rights, the quality, quantity and status thereof to be determined mutually by the Bangsamoro and central governments.
7. In addition to being a major cause of social tension and marginalization, it is equally recognized that uncertainty over land tenure is a significant impediment to investment in conflict-affected areas. This, in turn, stifles opportunities for job creation that can promote inclusive growth and stability. The MILF’s 2015 Bangsamoro Development Plan (BDP), among other policy documents, acknowledges that attaining a stable land tenure arrangement requires coordinated and long-term policy and institutional action by national, regional, and local government agencies. However, addressing land issues is highly fraught not only because of its technical complexity, but ultimately because the problems are rooted in competing narratives of identity, domain, and territory.

Normalization, Transitional Justice and Reconciliation

8. A central element of the overall process towards sustainable peace as laid out in the FAB is “normalization.” This is defined as “a process whereby communities can achieve their desired quality of life, which includes the pursuit of sustainable livelihood and political participation within a peaceful deliberative society.”² Transitional justice is framed as an element of normalization, and is being operationalized through the Transitional Justice and Reconciliation Commission (TJRC).³ The TJRC is mandated to undertake a study and make recommendations to promote healing and reconciliation of the different communities that have been affected by the conflict, including related to the issue of land dispossession.⁴
9. To fulfil this mandate, the TJRC conducted an extensive “listening process” that includes hundreds of communities covering a diverse range of ethnic and religious groups. The Commission also created study groups covering four areas of interest: historical injustices; human rights violations; legitimate grievances; and marginalization through land dispossession.

2 Annex on Normalization, Framework Agreement on the Bangsamoro (2012)

3 Normalization as defined by the CAB has three components: i) security arrangements, including decommissioning of the Bangsamoro Islamic Armed Forces (BIAF), redeployment of Armed Forces of the Philippines (AFP) units, policing reforms, and disbanding of private armed groups; ii) socioeconomic development; and iii) transitional justice.

4 The report of the TJRC is available at www.tjrc.ph

10. To support the work of the Land Study Group, the TJRC signed a Memorandum of Understanding in August 2015 with the World Bank and the International Organization for Migration (IOM). A copy of the Concept Note describing the activities captured in the MOU is attached as **Annex A**.
11. This report summarizes the findings and recommendations of the WB-IOM technical team supporting the Study Group on Marginalization through Land Dispossession and is submitted for the consideration of the Study Group and the TJRC as a whole.

B. Objective and Value-Added

12. The objective of this report is to document the social, economic, and political impacts of land dispossession on Mindanao's development, particularly areas inhabited by the Moros and IPs. To achieve this overall goal, the study does the following:
 - a. Traces the historical evolution of land dispossession (through a chronology of laws and policies and their impacts on Moro and IP land rights);
 - b. Illustrates the impact of dispossession using maps showing patterns of change in population, ethnicity, resettlement, political boundaries and conflict, etc.;
 - c. Discusses various causes of land dispossession;
 - d. Documents and assesses the effectiveness of existing formal and informal land dispute settlement mechanisms;
 - e. Analyzes implications of the CAB and land-related provisions of the draft Bangsamoro Basic Law for current land laws and institutions; and
 - f. Based on the historical review, a gap assessment of existing policies, laws and institutions and global experience recommends measures to address land dispossession that will lead to "healing and reconciliation."
13. **Land ownership and dispossession of Moros and IPs has been heavily researched.** The value-added of this report lies in the following contributions:
 - a. **Data-driven analysis.** This report exhaustively mined existing data sources to analyze the social, economic, and political impact of land laws and policies. Data sources include population censuses, official reports, studies, historical accounts, and interviews with experts. Data from the TJRC "listening process", which covered more than 210 sites, are also incorporated in the report. Data and information encapsulated by this report can serve as an initial core of an archive on land issues in the Bangsamoro.
 - b. **Spatiality.** Spatial analysis seeks to highlight the manifestations and impacts of land dispossession in

different parts of Mindanao, with a particular focus on Central Mindanao on the mainland and the Sulu archipelago.

- c. **Nuancing of narratives on land “dispossession.”** There are multiple narratives explaining the history, motivations, and impact of land dispossession in Mindanao. Data collected for this report validates this view by highlighting that land ownership and dispossession affected Mindanao stakeholders in various ways at different points in time. There is no single storyline that can fully explain the breadth and scope of land dispossession. Accordingly, the report seeks to understand and document land ownership and dispossession from multiple perspectives and within the context of occurrence, rather than making judgments based on contemporary parameters.
- d. **Institutionalization of land mediation and conflict resolution mechanisms.** The report discusses existing formal and informal institutions on land dispute settlement. It also provides concrete suggestions on how to strengthen formal institutions and how informal institutions can be accommodated in the current legal framework on dispute settlement or under new arrangements once Congress passes a CAB-compliant enabling law.

C. Outline

14. To attain these objectives, the report is divided into eight subsequent sections.
 - a. **Section II** describes the methodology, including definition of key concepts.
 - b. **Section III** sets out the historical framework and empirical foundations for understanding marginalization through land dispossession in Mindanao. It chronicles key laws and policies from 1898 onwards that shaped the land rights of Moros and IPs in Mindanao, particularly those in the proposed Bangsamoro region. The impacts of these policies will be measured through shifting patterns based on three specific indicators:
 - i. Changes in the population and ethnic mix in Mindanao, using available population census data from 1903 to 2010;
 - ii. Changes in settlement, ethnic segregation and integration patterns in Mindanao (particularly Central Mindanao) as a result of resettlement and migration; and
 - iii. Changes in the political and administrative boundaries as a result of waves of migration to Mindanao.
 - c. **Section IV** discusses the various causes of land dispossession. It argues that there is no single narrative on land dispossession because of the specificities of the historical context when it occurred, the key stakeholders involved, and the geographical area where it transpired. It notes that an appreciation of these variations on the causes and forms of dispossession is important in arriving at effective contemporary remedies.

- d. **Section V** discusses the impacts of land dispossession on Moro and IP communities from the turn of the 20th century up to the present by examining:
 - i. Changes in the ethnic composition of the population in Mindanao using available census data from 1903 to 2010;
 - ii. Changes in settlement and ethnic segregation and integration patterns in Mindanao, particularly Central Mindanao, a result of waves of resettlement and migration;
 - iii. Changes in the political and administrative boundaries as a result of waves of migration to Mindanao; and
 - iv. Socio-economic and environmental impacts of the various government's resettlement programs that caused land dispossession of the Moros and IPs;
- e. **Section VI** describes existing formal and informal land dispute mechanisms in selected provinces and explores how they can be strengthened or incorporated into the formal legal system. It also includes a brief description of existing laws and institutions related to land administration and management, how their operations complicate the Mindanao land problem, and possible legal measures to address the institutional complexity.
- f. **Section VII** analyzes land-related provisions of the CAB and the proposed BBL and legal implications vis-à-vis existing national land-related laws and institutions.
- g. **Section VIII** concludes the report by detailing concrete recommendations to address land dispossession and marginalization of Moros and IPs, drawing on the data and analysis presented and global experience.

II.

Methodology



II. Methodology

A. Definition of Key Concepts

15. **The work of the Technical Team revolved around the three concepts of “land dispossession,” “marginalization,” and “dealing with the past,” which are embedded in the mandate of the TJRC.** These concepts are defined below.
16. “Dealing with the Past” (DWP) refers to the measures a society takes to address a past of widespread and systematic human rights violations, committed under an authoritarian regime or during conflict. This is used as an alternative term to “transitional justice,” with the understanding that the term has broader outreach and acceptance, since every member of society has a “past” and therefore has a stake in the future.⁵
17. The DWP approach suggests that dealing with a past of systematic violations be done in a holistic manner and constructed around a set of rights. These rights include: a) the right to know (e.g., through truth commissions, historical memory efforts and archives); b) the right to justice (prosecutions, criminal trials); c) the right to reparations (including reparations for land and property rights violations, if relevant); and d) the right to non-repetition (vetting of institutions involved in human rights violations, security sector reform, among others).
18. **Land dispossession** is defined as the illegal, unjust, or fraudulent acquisition of land that belongs to another individual or a group of individuals. Land acquired through a market transaction without duress applied to the seller by the buyer by virtue of an asymmetric politico-economic power relationship and paid at a prevailing price deemed reasonable when the transaction was made, does not belong to this category. This definition stresses that land transactions may be deemed legal but still can be unjust.
19. This report defines **marginalization** as systematic discrimination towards a group or community of people belonging to a particular ethnic group, race, religion, or income class through overt (i.e., verbal or physical attacks) or covert (i.e., informal rules or traditional and cultural practices, some of which are articulated in laws and policies) methods. Marginalization covers socio-economic and psychological aspects of discrimination.
20. **Identity, domain, and territory.** There are three elements involved in dealing with land from the Bangsamoro

5 As formulated in a 2004 report on the rule of law and transitional justice, the UN Secretary General defines transitional justice as the ‘full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale abuses committed in the past, in order to achieve accountability, serve justice, and achieve reconciliation.’ See the Report of the UN Secretary General on the Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (S/2004/616), p. 4. Available at: <http://www.unrol.org/files/2004%20report.pdf>

LAND: TERRITORY, DOMAIN, AND IDENTITY

perspective. These are: identity, domain, and territory. “Identity” refers to the socio-cultural attributes of a group of people that distinguish them from other groups. “Domain” is the extent of coverage of the rule of a political formation (e.g., Sultanate) which includes areas inhabited by people of the same identity and those areas occupied by people belonging to a different identity but under the rule or protection of the former. “Territory” is the actual surface land area under the control of a ruler. For Moro scholars, these three concepts are critical to reaching an acceptable solution to the issue of land dispossession.

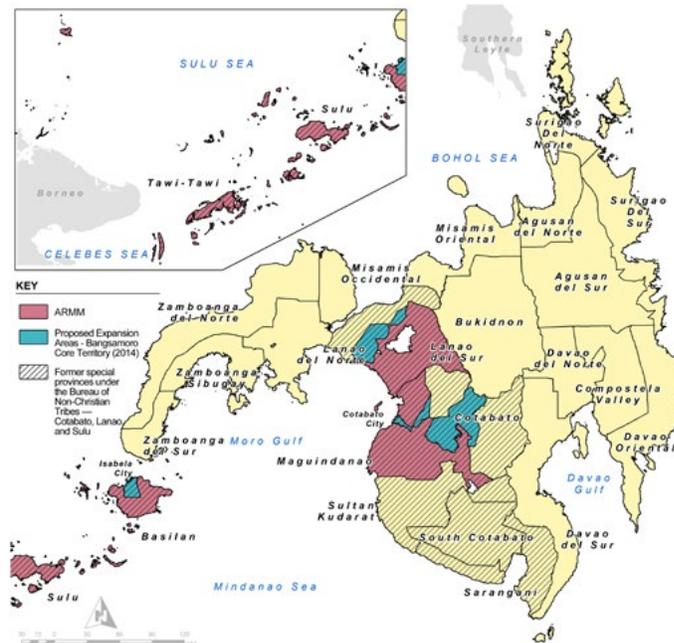
B. Coverage

21. Based on guidance from the TJRC, this study covers the period from the point of the forced annexation of Mindanao to the Philippines through the Treaty of Paris between the Spanish and United States Governments signed on December 10, 1898 (although some pre-1898 sources were utilized) up to the present, a span of more than a century.

Geographic Coverage

22. The study looks at three levels of territory: the proposed Bangsamoro area under the CAB (refer to **Map 1**) Mindanao which includes the Sulu Archipelago, and a meso-level focus area covering the old Cotabato province, the former Lanao province, and the Sulu Archipelago prior to 1959 and succeeding years when the geo-political administrative boundaries were gerrymandered. These are the provinces and regions which have a large Moro population.

MAP 1. Study Area: Mindanao and the Proposed Bangsamoro Core Territory



Source: CAB 2014

C. Data Sources

23. The study team drew on a range of different data sources, including: a) an exhaustive literature study; b) analysis of relevant laws, policies and institutions dating back to 1898; c) relevant data from the TJRC's "listening process," covering more than 210 sites across Mindanao (refer to **Annex B** for a summary of relevant results); d) demographic data from official censuses from 1903 to 2010; e) a range of different systems for monitoring violent conflict; f) the report of Professor Faina Ulindang submitted to the TJRC;⁶ g) case studies from Wao in Lanao del Sur, Upi in Maguidanao and the municipality of Midsayap in North Cotabato province; and h) consultations with the private sector on land concerns in the proposed Bangsamoro area.⁷
24. **Demographic analysis.** Available official census data from 1903 to 2010 were analyzed at decade-long intervals to track changes in the population and ethnic mix in Mindanao over the last hundred years. Population shifts were tracked in terms of three broad categories: Islamized groups comprising the Moro, indigenous peoples (IPs), which in contemporary times are often called "*lumad*,"⁸ and other Filipino ethnolinguistic groups often referred to as "Christian settlers."
25. **Conflict.** The lack of comprehensive time-series data on land conflict in the geographic areas of interest prevented deeper analysis of the social, economic and political impacts of land policies on the evolution of violence and contemporaneous settlement patterns using a natural experiment setup (i.e., during and after each wave of land dispossession). In a limited attempt to analyze the impact of land polices on dispossession and violence, the report draws on a number of datasets on violent conflict, including: a) the Alert Conflict Monitoring System (formerly known as the Bangsamoro Conflict Monitoring System), which compiles events-based violent conflicts in the present ARMM and Cotabato City based on police blotter and media reports⁹; b) raw data from the Conflict Alert System/BCMS covering North Cotabato, Sultan Kudarat, Lanao del Norte and the cities of Cotabato and Isabela; c) records of the Government of the Philippines-MILF Joint Coordinating Committee on the Cessation of Hostilities (GPH-MILF JCCCH), the ceasefire mechanism of the government and the MILF, over the same period; and d) conflict data from the Regional Reconciliation and Unification Commission (RRUC), whose mandate is the resolution of "*rido*" (clan feuds); and e) the Regional Human Rights Commission (RHRC), whose mandate is to address human rights violations within ARMM.
26. **GIS.** The aforementioned datasets—population, resettlement, political boundaries, conflict, and development—were analyzed using geographic information system-based techniques and are presented as maps to aid understanding.

6 Ulindang, Faina C. (2015). "Report on Literature Survey by the TJRC Study Group on Marginalization Through Land Dispossession." Unpublished report.

7 The future-oriented private sector forums on land and development were undertaken in partnership with the Foundation for Economic Freedom (FEF).

8 Refers to *katawhang lumad* or literally "indigenous peoples" in Cebuano. This was officially adopted as an autonym in 1986 by the non-islamized indigenous peoples of Mindanao. In all cases, the categorization built by Rodil (2010) was used, where a total of 35 Ethno-linguistic groups (including sub-categories) are said to comprise the lumad. Rodil mentions 20 major ethno-linguistic groups while the rest are grouped together under the heading "sub-tribes."

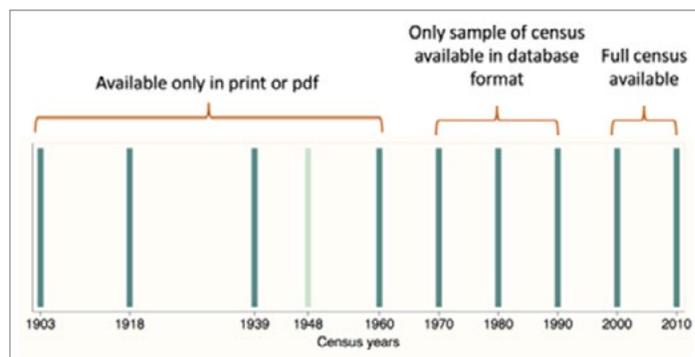
9 The Conflict Alert System/BCMS has collected, classified and analyzed the types, triggers, forms, actors and impacts of conflict, down to the *barangay* level, from 2011 to 2015. Violent incidents are categorized by underlying issues (horizontal and vertical), forms, human costs, actors, and disaggregated by geography. In all cases, conservative estimation of costs were used. Ultimately, the Conflict Alert System/BCMS strives to provide comprehensive publicly-available information for researchers, development actors and decision-makers. All Conflict Alert System/BCMS data is open source and available online through <http://conflictalert.info> (formerly <http://www.bcms-philippines.info>).

27. **Additional data sources.** Analyses, findings and recommendations in this report were mainly based on official government data and archival materials from various sources such as the National Archives, National Museum, the University of the Philippines Main Library and its college-based libraries, foreign libraries with Filipiniana collections, personal collections of specialists on the subject matter, history books, official reports, case studies, and on-going research on conflict and the peace process. These were supplemented by interviews with key stakeholders in Mindanao and the peace process, as well as the results of the community listening process conducted by the TJRC. The list of stakeholders consulted is attached as **Annex C**.

D. Data Limitations

28. **A number of limitations were encountered by the Team in gathering, compiling, and processing the data, as follows:**
- Access to data.** The breadth of analysis attempted by this report was hampered by available data, particularly official records related to timber licensing and pasture lease agreements. Due to the lack of a reliable archival system, reconstruction of information prior to the 1970s proved difficult, regardless of sector. **Figure 1** below shows data availability in various forms and scope of coverage, which limited the team’s ability to conduct comprehensive cross-validation analysis.

FIGURE 1. Limits of Available Census Data



Note: Data for the years 1970, 1980 and 1990 each comprise 10% of the census data and are representative at the municipality level. Data were sourced from the University of the Philippines Population Institute.

- Gaps in data.** The censuses between 1903 and 2010 differ in how ethnicity information was captured. The Moros and the IPs were classified as “wild tribes” in the 1903 census, as opposed to “civilized population,” which covers believers of the Catholic Church (except for foreign-born population). The wild tribes in Mindanao were described as the Moros, Atas, Bagobos, Mandayas, Manobos, and Teduray. The 1918 census, on the other hand, classified population according to religion (Christian and Non-Christian), replacing the “civilized-wild tribe dichotomy.” Christians included Catholics, Aglipayans, and Protestants and foreigners, while non-Christians included Muhammedans, Pagans, Buddhists, and other religions. In succeeding censuses, ethnicity was identified on the basis of the languages or dialect

spoken (1939-1990), by ascription (2000), or by blood (2010). Varying questions on how ethnicity was determined in various population censuses are presented in **Table 1**.

TABLE 1. Ethnicity Questions in the Philippine Census

1903	Tribe
1918	Religion
1939	Is ____ able to speak ____ (specified dialects or language)?
1948	Enter mother tongue or native language or dialect, that is, language or dialect spoken at home in earliest childhood.
1960	What was the language or dialect spoken at home in his/her earliest childhood?
1970	What was the dialect or language spoken at home in his/her earliest childhood?
1980	What language/dialect is generally spoken in this household?
1990	What was dialect /language spoken at earliest childhood?
2000	How does ____ classify himself/herself? Is he/she an Ibaloi, Kanakney, Mangyan, Manobo, Chinese, Ilocano, or what?
2010	What is ____ ethnicity by blood? Is he/she a/an ____?

These varying questions on ethnicity complicate analysis of the social impact of settlement patterns and displacement, though the data set is the best available.

Other data limitations encountered were as follows:

- i. No consistent municipal-level data is available prior to 1970, and *barangay*-level information is only available for the 2000 and 2010 censuses.
- ii. Due to lack of time and information, reconstruction of political boundary data could only be done down to the municipal level. Some sample records from resettlement programs such as the National Resettlement and Rehabilitation Administration (NARRA), Economic Development Corporation (EDCOR), and Land Settlement and Development Corporation (LASEDECO) have been obtained by area specialists, but will require extensive archival work for full reconstruction.
- iii. Available conflict data is largely within the period of 2011-2014, and is limited by the biases and relative priorities of the collecting institutions. Conflict Alert System/BCMS, RRUC, and RHRC data only cover the present ARMM, while CCCH data is largely limited to priority areas where the GPH-MILF ceasefire mechanisms are in place. The Conflict Alert System/BCMS set is supplemented by unpublished PNP blotter data from North Cotabato, Sultan Kudarat, and Lanao del Norte, and selected newspaper clippings in ARMM, but must be carefully treated to avoid sampling bias. The Conflict Alert System/BCMS does not cover Sarangani and South Cotabato, which are part of the study area comprising the old Cotabato province. Cross-referencing with information from civil society-run projects such as those

implemented by Catholic Relief Services (CRS) and The Asia Foundation (TAF) indicates a significant level of underreporting. These available event-based sets are supplemented by information on displacement from the Department of Social Welfare and Development (DSWD) and a 2011 World Bank-World Food Programme (WB-WFP) displaced population study on Central Mindanao. Nevertheless, serious research work in conflict areas, whether in Mindanao or nationwide, requires more rigorous efforts to ensure that analysis and decision-making is based on comprehensive and objective information.

- iv. **Mapping limitations.** Map overlays were created by geo-referencing datasets using the Philippine Standard Geographic Code (PSGC) system. PSGCs should not be confused with global positioning system (GPS) coordinates, as the use of the former merely fixes a given data point at the center of the chosen geographic unit of analysis—in this case, mostly at municipal or *barangay* level. This degree of resolution is adequate for setting a broad visual narrative, but is not intended to define legal boundaries. Nevertheless, it is hoped that the mapping conducted by the study can provide the impetus for more extensive data collection and granular analysis.
- v. **Time.** The study was conducted from June to September 2015. Three months was not sufficient time to compile all relevant datasets or conduct extensive ground validation. Nevertheless, utmost due diligence was exercised by the research team through triangulation of data and information obtained from other sources. It is hoped that the report can be a starting point for further research.



III.

Historical Background on Land Dispossession (1898-2015)

III. Historical Background on Land Dispossession (1898-2015)

29. **Dispossession of the original inhabitants of Mindanao came in four waves: a) 1898 up to the Commonwealth period; b) 1946 up to the late 1960s; c) 1970s up to the mid-1980s; and d) late 1980s up to the present.** Each of these waves was characterized by a different set of policy instruments. These instruments were, in turn, driven by the political and economic development agenda of the central government at the time (whether colonial or Filipino) and closely linked to the evolution of economic activity from slavery to agriculture and, later, logging and mining. The dominant economic activity at the time of each of the four waves drove the manner in which wealth accumulation occurred in the context of nascent state formation. This, in turn, triggered land dispossession and marginalization. A chronology of relevant laws and policies is provided as **Annex D**.

The Spanish Colonial Period

30. Supra-village governance structures already existed in Mindanao prior to the Spanish conquest of the Philippine archipelago in the 16th century in the form of the Sultanates brought by Muslim pilgrims to the Philippines from the 14th century onwards. This included the Sultanate of Sulu, the Sultanate of Maguindanao, Rajah sa Buayan, the Sultanate of Kabuntalan, and the Pat a Pagampong ko Ranao (the Four

BOX 1. Critical Concepts in Understanding the History of Land Dispossession

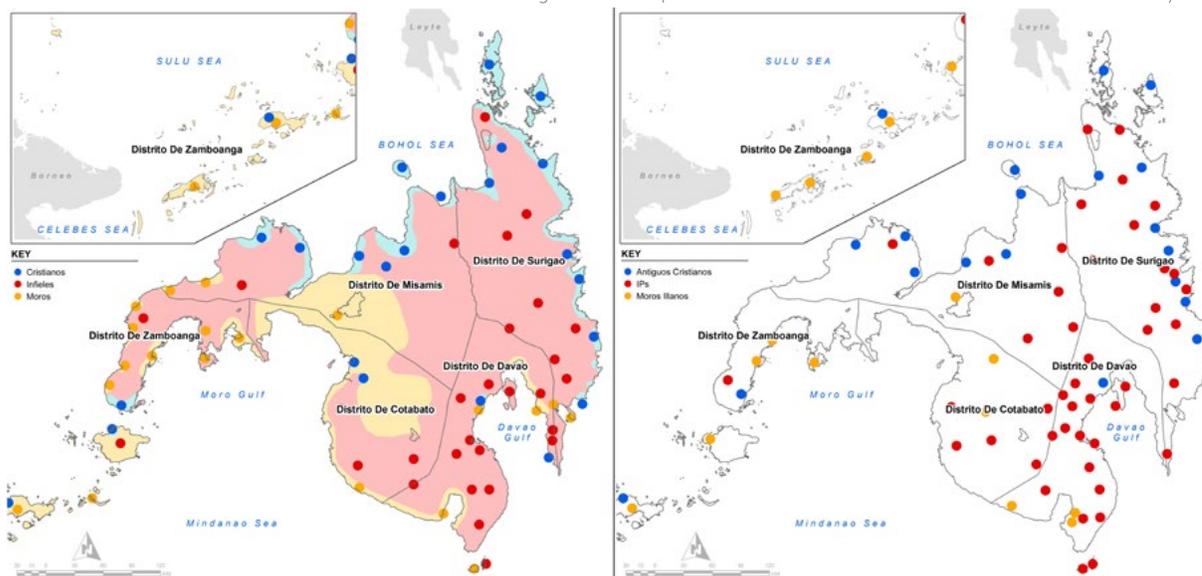
Clash of norms over concepts of land rights and ownership. While the original residents viewed land as a gift from a superior being that should be communally shared, the Spanish colonizers declared all lands in the Philippine archipelago as belonging to the monarchy. In contemporary times, this is known as the Regalian doctrine of land ownership, where all lands within the national territory are deemed to belong to the state.

Cycles of abolition of institutions and territorial boundaries. Institutional uncertainty persisted due to the constant change of agencies and mechanisms governing Mindanao and the island provinces. Land laws were changed to favor Christian settlers and corporate ownership of native lands. Political boundaries were re-arranged to consolidate land ownership by Christian settlers and corporations of lands previously owned by the original inhabitants and to ensure local governmental instrumentalities were in the hands of the settlers.

Sources of wealth accumulation. Shifts in the source of wealth accumulation had serious implications on state capability—whether that of the Sultanates, the colonial government or the Filipino government—to expand its power and resource base. The weakening or strengthening of political and military power bases of state formation depended highly on how well they took advantage of emerging sources of wealth accumulation—shifting from slavery to agriculture and later to logging and mining—and how those sources were deployed to consolidate and expand their power base.

Principalities of Lanao), among others.¹⁰ Each of the sultanates and political formations ruled a general swath of territory, the scope of which depended on the capacity of the ruling sultan to project military and political might. Historical and ethnographic accounts suggest that the military and political power of the sultanates prior to the American colonial period was primarily based on slavery and slave trading, and partly on trade with neighboring islands and countries (such as China and India) and original inhabitants living in the inland forest and mountainous areas of Mindanao.¹¹ As shown in **Map 2**, settlements occupied by Moros were mostly located along the coastal areas for easier transport of people and goods, whilst their domain extended to the inlands mostly occupied by non-Islamized groups who acted as tributaries of the sultans.¹²

MAP 2. Settlement Patterns of Ethno-religious Groups in Mindanao at the Turn of the 20th Century



Note: *Mapa Ethnografico del Archipelago Filipino* (1890) (left) and *Mapa Politico-Hidrografica de Mindanao* (1896) (right)
Sources: Blumentritt (1890) digitized by Padilla (2004), and the Mission de la Compania de Jesus, National Archives of the Philippines, digitized by WB-IOM team (2015). Dots refer to location of settlements and do not have any numerical value attached.

31. The Spanish conquest of the Philippine archipelago prevented the further spread of the influence of the sultanates to the northern islands of the country, although records show at least two Muslim settlements in Luzon at the arrival of the Spaniards in 1565: the principality of Maynilad (present-day Manila) and a number of settlements in Mindoro (see Majul 1973). Military garrisons¹³ were built by the colonizer in strategic parts of Mindanao to contain the influence of the sultanates and prevent them from raiding Christian communities in the north as sources of loot and slaves.¹⁴ The garrisons also served as forward bases for military assaults, and to spread Christianity.

10 The various sultanates should not be mistaken as having the same level of organizational unity and centralization of power which could have given rise to a central state. A number of them were loose confederations of principalities sharing a common language and culture—far from being considered a state with its full complement of bureaucrats and functionaries.

11 Refer to Casino (2000), Iletto (1971), Worcester (1913) and Warren (1982) for a discussion of the role of slavery and slave trade in the economy during the reign of the Sultanates.

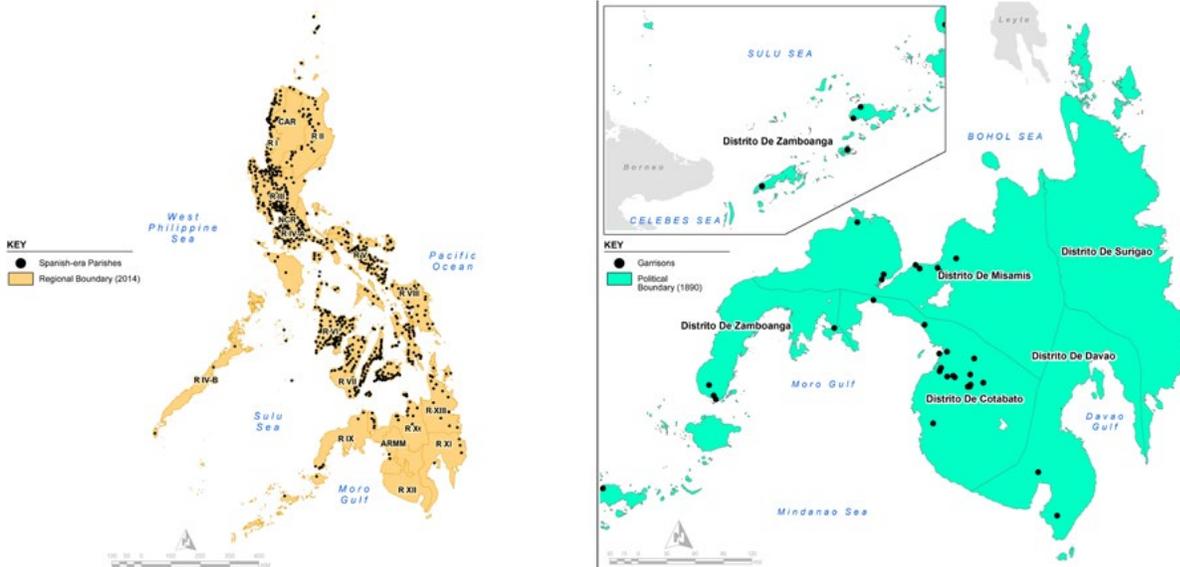
12 The current discourse refers to them as “entrusted partners” rather than vassals or tributaries.

13 Most of these garrisons were manned by just a few Spanish military officers and Christian-converted original inhabitants as their soldiers. Refer to Sawyer (1900) and Hurley (1936) for a list of Spanish garrisons in the Moro province.

14 Slave trade was a lucrative activity during this period given the severe shortage of labor to serve as farmers, servants, boat rowers, shipbuilders, and slave workers under the Sultanates or in Dutch plantations in Indonesia. Performance of these functions by slaves allowed the dominant ethnic group to hone their skills as warriors without concern for their subsistence requirements. Casino (2000) also pointed out that a number of conflicts between forces of the sultanate

MAP 3. Catholic Parishes (1850)

MAP 4. Spanish Politico-Military Districts and Garrisons (1890)



Note: Dots refer to location of settlements and do not have any numerical value attachment.

Sources: Villasper (2015) using Dumol (2013) and Javellana (2010) (left); Abdulhaqq (2011) citing Hurley (1936) and Sawyer (1900) (right)

32. **Maps 3 and 4** illustrate how the Spanish (using Catholic parishes and garrisons as proxy) never fully gained a foothold in Mindanao, and were largely limited to selected coastal communities. The Regalian doctrine of land ownership was introduced to guarantee ownership by the colonizers of the lands they conquered and settled.¹⁵ But while the Spaniards were able to limit the territory ruled by the Sultans, they never had the sultanates under their full control.¹⁶ The establishment of these parishes and garrisons was cemented through a number of treaties between the Spanish Governors and the ruling datu, many of which were rescinded upon the datu's death. (Abdulhaqq 2011, and Mastura 1984). By the turn of the 20th century, Mindanao and the Sulu islands¹⁷ were still largely populated by Moros and Indigenous Peoples (IPs).

A. The First Wave (1898 up to the Commonwealth Period): The Beginnings of Systematic Land Dispossession

33. **The American invasion of the Philippines at the turn of the 20th century dramatically altered the demographic, political and economic landscape of Mindanao.** By October 1902, most of the territories

and the colonial government were due to the latter's abolition of slave trade (refer also to Pastor-Roces 2015, and Warren 1982). The success of the Spaniards in checking slave raids in Luzon and Visayas caused a shift in the slave capturing activities to the forest and mountain inhabitants of Mindanao (Casino 2000).

¹⁵ The Regalian doctrine of land ownership views that all lands of the public domain belong to the State (or during the Spanish colonial period, to the King or Monarch) and 'the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony' (LGSP-ARMM 2009). However, the Regalian doctrine of land ownership was hardly implemented in Mindanao and the Sulu Archipelago as the Spaniards were in the defensive mode in these areas, had limited presence and generally weak capacity to enforce laws and policies.

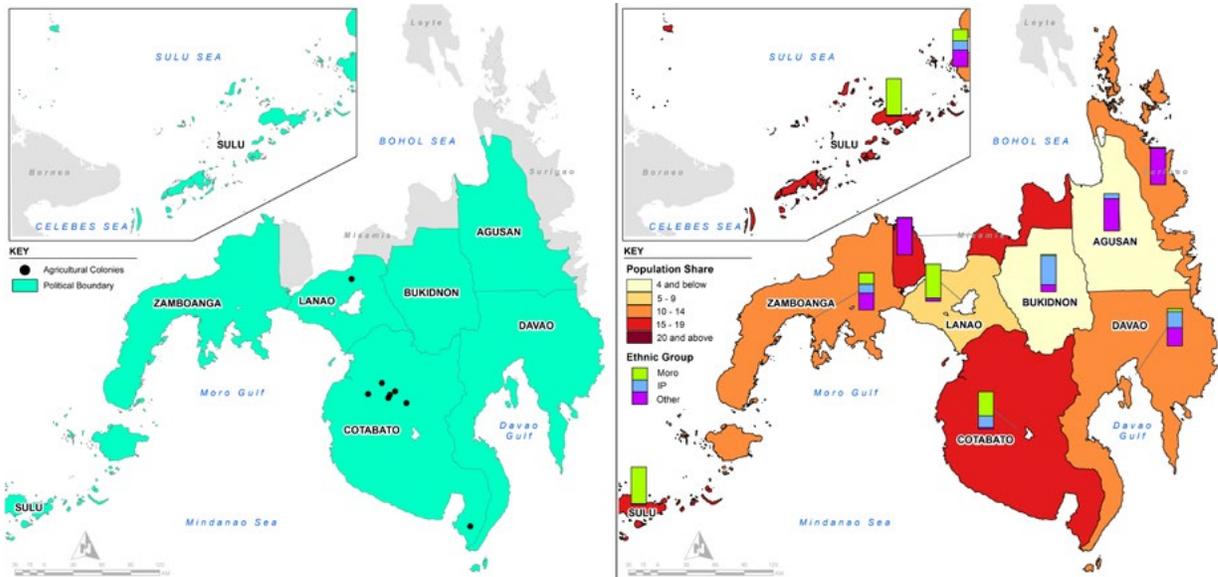
¹⁶ Spain's ultimate objective was not defeating the sultanates but containing their upward expansion. Hurley (1936:44) notes that the Spanish "had no mode of attack in Mindanao. In general, they waged a defensive warfare, building strong fortifications and staying within them", and "were never able to walk with safety outside the walls."

¹⁷ In those days, these included the islands of Basilan and Tawi-Tawi, besides the main inland of Sulu.

accepted as belonging to the Philippines under the 1898 Treaty of Paris were reverted to civil government and local civilian control under the American governor-general, by fiat of the Philippine Commission—with the notable exceptions of “Moro” and “pagan” or “non-Christian” areas of Mindanao and Sulu, which were controlled by the United States Army. The powerful American military force, backed by technological advances in transportation and communication, was able to effectively place large sections of Mindanao under its control, whether by force or persuasion. But unlike the Spanish colonizers, under whom land dispossession of the Moros and IPs was primarily a product of colonial conquest and the imperative of spreading the Christian faith, the American regime started a deliberate and systematic policy of depriving Moros and IPs of their lands as part of its agricultural development agenda and its goal of appending the Philippine economy as a satellite to the US economy.¹⁸

34. A vigorous campaign against slavery and slave trade was launched by the American colonial regime consistent with the US Constitution (Thirteenth Amendment) banning slavery.¹⁹ Land became the major source of wealth accumulation. Land generated the revenue required by the American colonizers (and later, the Philippine government) to finance the consolidation and expansion of state functions. This shift of the source of wealth from slavery and slave trade to land-based revenues, or from “people-resource to land resource”, undermined further the politico-military power base of the sultanates.²⁰ By contrast, the new colonizer immediately saw the importance of owning land, given the resettlement experience in their homeland. In fact, many of the American military officials and governors who led the “pacification” campaign during the early American colonial rule were veterans of military campaigns against native American Indians.²¹

MAP 5. Population Under the US-occupied Moro Province (1903)



Sources: Philippine Commission Act No. 787 series of 1903 creating the Moro Province and 1903 Census of the Philippines

18 Though this was the grand design, the American colonial government met limited success (refer to Hayase 1984).

19 The 13th Amendment specifically provides for the “abolition of slavery and involuntary servitude, except as punishment for a crime.” This Amendment was ratified by the required number of US States in December 1865.

20 Refer to Casino (2000).

21 Refer to Pastor-Roces (2015).

35. The census of 1903, the first under the American occupation, recorded 352,000 Moro and IP people or 52 percent of the Mindanao population.²² The Moro population was concentrated in the Moro Province, which included the *comandancias*²³ of Cotabato, Davao, Lanao,²⁴ Sulu and Zamboanga (refer to **Map 5**). Moros accounted for 69 percent of population in the Moro Province, while IPs were 10 percent. The IPs were a significant population in the provinces of Davao, accounting for 52 percent. In Misamis and Surigao, IPs were 14 and 12 percent of the population, respectively.
36. The American colonial government introduced the Torrens Title system, strengthening individual and corporate ownership of land at the expense of communal usage rights preferred by Moros and IPs.²⁵ It declared null and void all land grants awarded by sultans, datus, and local chiefs of non-Christian tribes.²⁶ Act 2874 of 1919 lowered the hectare ceiling of lands that could be owned by Moros and IPs compared to Christian settlers.²⁷ The Cadastral Act of 1907 effectively dispossessed the Moros and IPs of their lands as the survey facilitated the awarding of land titles to claimants and institutionalized the Torrens title system of land ownership.²⁸
37. **The American colonial regime built on this initial set of laws that clashed with Moro and IP concepts of land ownership and commenced a program of inward settlement by the Christians from the northern islands which proved to be prejudicial to Moro and IP ownership of lands.** Act No. 2254 of 1913²⁹ encouraged the establishment of “agricultural colonies” in Cotabato and Lanao for migrant settlers of Luzon and Visayas.³⁰ The northern settlers began the arduous task of clearing large areas of forest and swamp land for cultivation in pursuit of the colonial regime’s goal of raising agricultural productivity and government revenues and to “civilize” ethnic inhabitants of Mindanao. However, the inhospitable environment, combined with inadequate roads and support in the settlement areas and poor government management of the programs prevented migrants from exploiting the vast agricultural potential of Mindanao. Thus, despite active encouragement by the American colonial regime, massive resettlement of Mindanao by northern migrants did not take place during that period. The Quirino-Recto Colonization Act (No. 4197) of February 1935 attempted to address the problems encountered by the early resettlement programs. The Commonwealth Government constructed more roads and conducted land surveys prior to the

22 United States Bureau of the Census, 1905. Census of the Philippine Islands: 1903, volume 2.

23 *Comandancias* are districts under military control. In the 1903 census, Zamboanga, Jolo, Davao, and Cotabato were *comandancias*, which were then classified as provinces in the 1918 census as part of the Department of Mindanao and Sulu, along with Agusan, Bukidnon, and Lanao.

24 Refer to Pastor-Roces (2015).

25 Refer to Land Registration Act of 1902 or Act No. 496, which required the registration of all lands occupied by private individuals and corporations. It also stipulated that all applications for registration of land title shall be in writing, and signed and sworn by the applicant. Since many Moros and IPs were illiterate, they were effectively made ineligible to own land. Also refer to Public Act No. 926 of 1903, which declared that lands not claimed under Act No. 496 are properties of the State.

26 Act No. 718 of 1903.

27 Act No. 2874 of 1919 raised the hectareage ceiling for homestead lands from 16 to 24 hectares only for Christian Filipinos and US citizens, but reduced it to 10 hectares for Moros and IPs. Later, Commonwealth Act No. 141 of 1936 lowered the hectareage ceiling under the homestead program that could be purchased by an individual from 24 to 16 has. However, the ceiling for Moros and IPs was further reduced from 10 to 4 hectares.

28 Claimants mostly belonged to the educated/literate class, because a key requirement for land ownership was that the awarded land titles must be written, signed and sworn to by the owner.

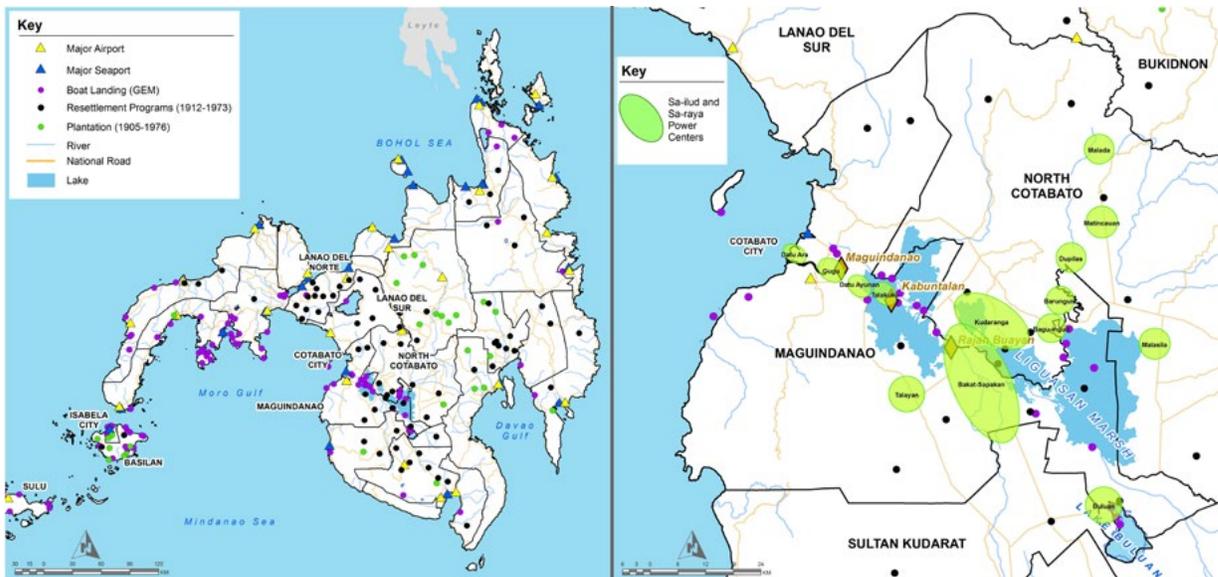
29 The establishment of “agricultural colonies” preceded the passage of this law because records show that an “agricultural colony” was established as early as 1912 in Pikit, North Cotabato.

30 It should be noted that the systematic establishment of agricultural colonies in Moro provinces became possible after a successful “pacification” campaign of the American forces against Moro fighters. On March 22, 1915, Sulu Sultan Jamal-ul Kiram II signed a Memorandum of Agreement with Frank Carpenter, then Governor of the Department of Mindanao and Sulu, recognizing US sovereignty over Sulu and its dominion (Pastor-Roces 2015, Majul 1973, Gowing 1967, and Tan 1977).

establishment of more agricultural colonies to guarantee land ownership by settlers. The government also extended a package of subsidies to Christian migrants during their early years in the resettlement areas. The National Land Settlement Administration (NLSA) (Act No. 441 of 1939) was later established to serve as the “one-stop shop” for migrants’ concerns settling in Mindanao.

38. The construction of more roads to improve transportation of goods and services within and between agricultural colonies, the development of plantations such as pineapple in Bukidnon, rubber in Cotabato and Basilan, and abaca in Davao, and the expansion of logging had significant impacts on Mindanao’s political economy. First, roads opened up inward travel and weakened the economic power base of the Moros, who congregated along riverbanks and coastal areas. Second, the development of the agricultural sector shifted the source of wealth accumulation from slavery and slave trading to the land-based creation of surplus. This further undermined the economic base of the sultanates and their correspondin military might. The increasing importance of logging as an economic activity vis-a-vis farming foretold the immense role that this industry would play in wealth accumulation in Mindanao during the post-war period until the 1960s.
39. **Map 6** compares the pre-colonial traditional power bases of the Sultanates in Maguindanao and Buayan along the Pulangi River and the present national road network system in Maguindanao. While deltaic Cotabato City retains some regional economic significance today, its upstream counterpart Datu Piang (formerly known as Dulawan), which sits on the juncture of the Pulangi and Bakat Rivers, no longer receives the trade it previously enjoyed. Lingga (2004) notes that at its height, the Rajahs of Buayan ruled over the upper valley of Maguindanao, North Cotabato, interior areas of Sultan Kudarat and South Cotabato, and some parts of Bukidnon, extending as far south as modern-day General Santos City, which was known as Sugud Buayan, or the Harbor of Buayan.
40. Majul (1973) and Mastura (1984) note that various Senate committee reports emphasized that the land problems in Cotabato were caused by the great influx of settlers from other provinces, and ultimately, by the

MAP 6. Shift from Riverine to Road Transport in the Cotabato River Basin



Sources: JICA SERD-CAAM (2008) and USAID GEM2-3 (2011)

government's failure to help Muslims increase their productivity. Until 1971, there were no irrigation projects in any areas with predominantly Muslim populations, whereas the government spent significant amounts of public money facilitating the arrival of settlers through infrastructure and relevant support services.³¹ In so doing they repeated the mistakes of other resettlement programs in the region, including Indonesia, which also led to marginalization of original inhabitants and, later, major outbreaks of communal violence.

B. The Second Wave (1946 up to the late 1960s): Systematic Resettlement of Mindanao

41. **The post-independence era saw an expansion of resettlement programs as part of attempts by successive political administrations to ease agrarian unrest in the northern islands of the country.** Widespread landlessness in Luzon and parts of the Visayas, combined with exploitative share tenancy arrangements, spawned massive social unrest among the peasantry. Their grievances were exploited by the local communist movement, the *Hukbong Mapagpalaya ng Bayan* (HMB or *Huk*, for short), to advance its cause of establishing a communist state in the Philippines. In response, the government, particularly the Magsaysay administration (1953-1957), unveiled a “land to the landless” program. Offering the prospect of owning land, the program resettled landless farmers in the northern islands to Mindanao. A succession of resettlement agencies was established to accelerate implementation of the resettlement programs: the Rice and Corn Production Administration (RCPA) was created in 1949; NLSA was replaced by the Land Settlement Development Corporation (LASEDECO) in 1950, LASEDECO by the Economic Development Corporation (EDCOR) in 1951; and EDCOR by the National Resettlement and Rehabilitation Administration (NARRA) in 1954.³²
42. **With the influx of settlers, the demographic composition of Mindanao drastically changed.** While the mix of Moros and IPs to non-Moros and IPs was 52 percent to 48 percent in 1903, by 1970 the ratio had become 18 to 82 percent (refer to **Map 7**).³³ By 1980, 75 percent of the Moros in Mindanao were concentrated in five provinces: Basilan, Lanao del Sur, Maguindanao, Sulu, and Tawi-Tawi.
43. Three observations should be highlighted in this demographic shift. First, although the resettlement programs ostensibly targeted former Huk members and sympathizers, few settlers actually came from their ranks. Rather, most were relatives and friends of early settlers or military personnel and their relatives.³⁴ Second,

31 See Pastor-Roces (2015), citing the Philippine Senate Committee on National Minorities. Note that the absence of data on gross regional domestic product prior to 1978 makes it difficult to assess the economic impact of policies implemented during that era.

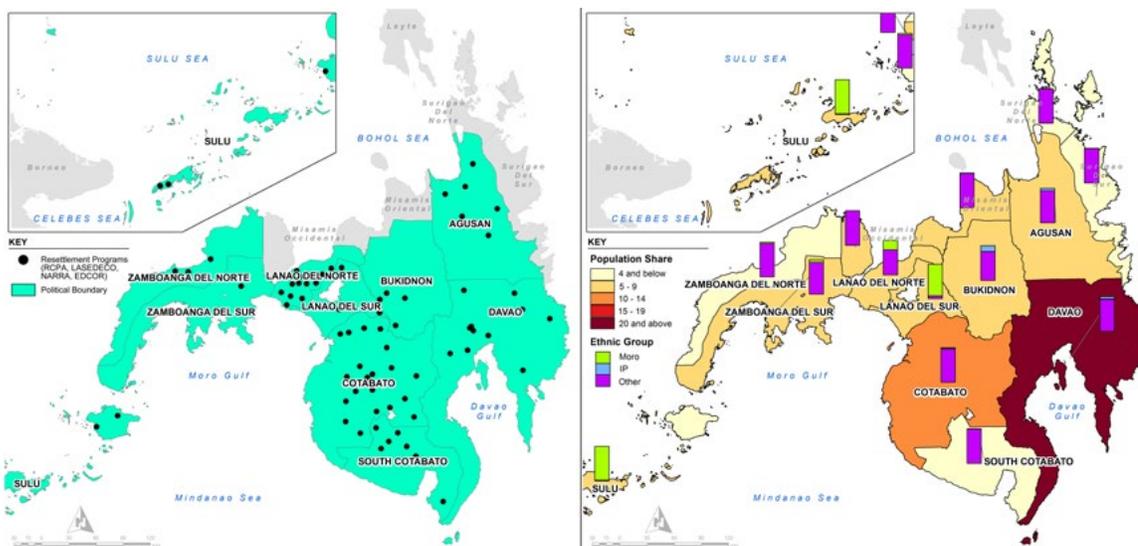
32 Historical accounts show that these resettlement programs failed to bring about mass migration due to graft and corruption, faulty recruitment policies and site selection, and incompetent management (Golay 1961; Paderanga 1987; and Marking 1950). Resettlement programs opened the door, but the massive influx that came later can be accounted for by spontaneous migration of family members or relatives of early settlers who were convinced that the new place offered the chance for a better life.

33 The numbers derived from the 1970, 1980, and 1990 censuses are estimates from available electronic files, which are samples of the census. Provided population weights were used to estimate the population at the municipality level. Complete census data are only available for the 2000 and 2010 censuses.

34 On the composition of settlers see Abinales (2000), Villano-Campado (2007), Abaya-Ulindang (2014) and Pastor-Roces (2015).

as of the late 1950s, many Moros and IPs did not object to the influx of the Christian settlers. Indeed, many welcomed them because of the possibility of learning modern farming methods, having more workers to clear forest, cogonal and swampy areas, and generating greater income.³⁵ Thirdly, the main reason why land disputes did not arise until the late 1950s was the relatively abundant supply of land in Mindanao at that time. Taken together, these factors demonstrate that not all the resettlement programs and not all the Christian settlers can be said to have engaged in unjust dispossession of Moro and IP lands.

MAP 7. Political Boundaries and Resettlement Sites (1966) vs. Population Composition (1970)



Sources: RCPA, LASEDECO, NARRA, EDCOR data from Ulidang (2014), LGSPA (2009), Rodil (1994), Huke (1973), Silva (1978), Gowing (1969), 1970 Census of the Philippines

44. **A parallel development was the rapid growth of the logging industry in the 1950s and 1960s in Mindanao, where forest resources had been relatively untapped.** Early logging operations took place in Bukidnon and Misamis prior to World War II, helping to trigger the entry and subsequent growth of settler communities. However, the massive expansion of the logging industry only took off in the 1950s and further developed in the 1960s through the grant of Timber License Agreements (TLAs) to selected Filipino and foreign-owned groups/companies. Compared to farming, where profits depend on seasonal conditions, logging produces immense windfall profits. It became the main source of wealth accumulation during these two decades, with highly adverse impacts on the environment and IPs residing in forest and mountainous areas.³⁶ Logging also became a major dollar earner for the Philippines at a time when the country embarked on the import-substitution industrialization (ISI) strategy, requiring significant dollar export earnings.³⁷ As such, the

35 Pastor-Roces (2015), Villano-Campado (2007) and Lacson (2008).

36 Vitug (1993) identifies the major beneficiaries of logging concessions during the time of the Marcos regime and the highly adverse impacts of logging operations on IPs inhabiting these forests and on the environment.

37 The strategy, as the name implies, required the local production of consumer items to substitute for imports. Its advocates believed that this would promote local industrialization, considered critical to achieve a modern industrialized economy. However, most of the local ISI industries were highly import-dependent in terms of capital requirements and inputs needed for the production of the consumer items. Thus, it had to steadily import capital goods and materials to keep the manufacturing industry running. This meant that the country needed foreign exchange (US dollars) to prop up the industry. Since the ISI manufacturing industry products were destined for the local markets (as they were of poor quality) and only agriculture (particularly sugar) and logging

state-sponsored issuance of TLAs should be seen as part of the central government's overall strategy of promoting Philippine economic development while strengthening and consolidating central state power. This had devastating consequences for the IPs and the environment.³⁸

C. The Third Wave (1970s to mid-80s): Era of State-Sponsored Displacement

45. As Marian Pastor-Roces recounts in her story of the municipality of Wao, Lanao del Sur, what had commenced as a relatively welcome influx of settlers began to unravel in the 1970s:

“ The ‘them’ versus ‘us’ tenor of domestic life in Wa-o assumed a parched quality through the second decade of in-migration. The lines of communication shrivels...talk becomes stilted, furtive. The host inhabitants thirst for the progress that continues to elude them....The stereotypes ‘Muslim’ and ‘Christian’ hardens and permits no shades of grey.³⁹

46. Unease grew between different ethnic and religious groups, as a still weak state struggled to make the social experiment of inward migration succeed against a backdrop of growing inequality and abuse of power. The Martial Law era saw hundreds of years of discriminatory policies culminate in widespread violence as settler populations looked to consolidate their growing political hold over the land-based economy. State-sanctioned or, at the very least, state-condoned militias wreaked havoc across Central Mindanao, killing, injuring, and displacing original inhabitants from their land. As former President Macapagal stated:

“ The authorities sanctioned and believably helped arm *ilagâs*, an armed band of Christian Filipinos, who have waged an operation to kill Muslims. Reports of massacres both of Muslims and Christians in a mutual rampage of violence and killing as a result have considerable truth in them. Seeing the hand of the government in the organization and operations of the *ilagâs*, it is understandable that the Muslim Filipinos have entertained the belief that the administration is out to exterminate them.⁴⁰

47. **The granting of TLAs and pasture leases intensified during the Marcos martial law regime as an instrument to buy and maintain the loyalty of the dictator's Generals and cronies.** Vitug (1993) notes that the number of licenses issued increased from 58 in 1969 to 230 by 1977. Marcos also issued “special permits”, many of which covered 100,000 hectares or more, in contrast to the typical 40,000-60,000 hectare size in the 1960s. In 1972 alone, the year martial law was declared, 12,000 special permits were issued directly by

were capable of earning much-needed dollars because of their export-orientation, the government had no choice but to squeeze the dollar earnings from these two sectors to finance its ambitious ISI strategy. For a comprehensive analysis of the impact of ISI on the Philippine economy, refer to Bautista, et.al. (1979).

38 Pastor-Roces (2015) noted that the destruction of forest resources resulted in outbreaks of crops pests and disease in the lowlands as natural habitats in the forest and the life cycle of these pests and diseases was disturbed. The current problem of “scale insects” attacking coconut trees is a prime example of the destruction of the natural balance in the ecosystem.

39 Pastor-Roces (2015a), page 54.

40 Cited in Pastor-Roces (2015a), page 75.

the dictatorship. Rapid deforestation of the remaining forest areas in Mindanao ensued, massively depleting the resource base of the IPs. As they were pushed further inward to remote mountainous areas, many IPs became more marginalized from society.

48. **A second significant feature of this era, this time pertaining to Mindanao's lowland areas, was the institutionalization of agrarian reform, in lieu of resettlement programs, as the main instrument to secure lands for landless northern settlers.**⁴¹ The Agricultural Land Reform Code of 1963 institutionalized the "land to the tillers" program as the cornerstone of the social equity thrust of the central government. Upon declaration of martial law in 1972, Marcos issued Presidential Decree No. 27, declaring the entire nation as an agrarian reform area. Implementation of land reform through the establishment of more settlements and consolidation of existing resettlement sites intensified the pattern of segregation between ethnic groups.⁴² During the Cory Aquino administration, Congress passed the Comprehensive Agrarian Reform Law of 1988 (RA 6657) which affirmed the "land to the tillers" concept pursued under the previous administrations. While the redistributive measure benefitted many small tillers in the country, it also disadvantaged many of the original inhabitants of Mindanao, who were not familiar with the complicated legal technicalities of claiming land under the reform measure.⁴³
49. **The closure of Mindanao's land frontier by the end of the 1960s and growing land scarcity saw land values rise and animosity erupt between Christian settlers and Moro and IP communities.** The either tacit or direct support of the martial law regime for the former intensified violent confrontation between the two groups, resulting in the massive displacement of Moros.⁴⁴ Displacement led to the systematic segregation of communities based on religion and ethnicity. Where Christians and Moros had previously interacted freely, violent conflict sponsored by the martial law regime effectively established an imaginary wall between the two communities, deepening suspicion and distrust.
50. **Resettlement areas served as the breeding ground of the notorious vigilante group, the Ilagâ.**⁴⁵ This group systematically raided and pillaged Moro communities, drove them from their homes and forced them to abandon their lands only to be taken over by Christians (refer to **Map 8**). The formation of Ilagâ groups crept from southern settlement sites in South Cotabato and Sultan Kudarat, up through Maguindanao as far as Wao in Lanao del Sur. In response, a Moro vigilante group, the Blackshirts, was formed to take punitive actions against Christian communities. However, without state backing, the Blackshirts were poorly armed vis-à-vis the Christian vigilantes.
51. Ilagâ depredation precipitated displacement and dispossession. It also brought about a physical split

41 Note that the series of land reform programs dwarfed the number of settlements established even during the height of the resettlement programs of the government in the 1950s. See Ministry of Agriculture 1978 data cited by Uhlig (1988).

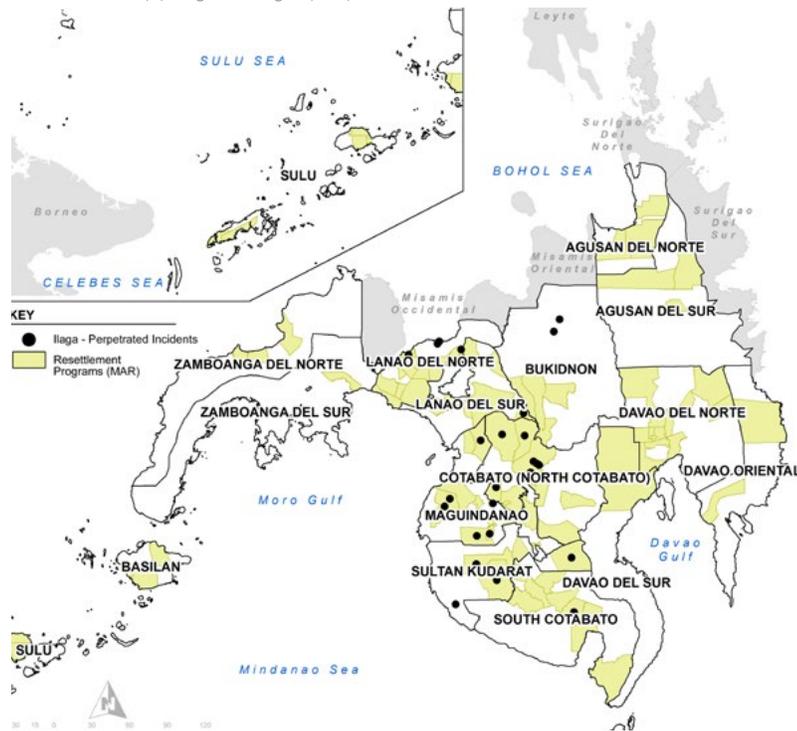
42 Since most available lands were still in Mindanao, this provided greater impetus to support waves of landless migrants from the northern islands to settle in the south.

43 In a study conducted by Ballesteros and Tiamson (2013), individual titling of CARP lands entails around 13 steps with each step involving several activities which an applicant must comply with before proceeding to the next step.

44 For detailed historical accounts of the widespread displacement of the Moros and IPs, verging on "ethnic cleansing", during the martial law regime, refer to Pastor-Roces (2015a) and Jubair (1999).

45 In the Ilonggo language "ilagâ" means "rat." Rat infestation was a common scourge of settler-tillers then. Later, a jest was made that ILAGA stood for "Ilonggo Land Grabbers Association", as most of the movement's members were from the Ilonggo ethnic group. This oft-repeated dark joke became part of the lexicography of the history of violence in Mindanao. The founder of the Ilagâ was Feliciano Luces, also known as "Commander Toothpick". His operational base started in Upi with the support of some Teduray IP and Christian settlers. He was given a celebrity status welcome by President Marcos when he visited Malacanang Palace in 1970. For a detailed account of Commander Toothpick's rise and fall, see Pastor-Roces (2015 & 2015a).

MAP 8. Partial Mapping of Ilagâ-perpetrated Incidents and Resettlement Areas (1970-1971)



Note: The data set only includes Moro deaths and losses. Hardly any data on settler losses have been recorded.
 Source: List of municipalities with resettlement areas taken from Ministry of Agriculture 1978 cited by Uhlig (1988).
 Violent conflicts recorded in Jubair (1999), Pastor-Roces (2015), Busran-Lao (2005) and Mastura (1971).

between Christians and Moros, many of whom previously lived side-by-side. In its extreme form, municipalities were carved out of a province or new provinces were created to clearly demarcate Moro or IP-dominated communities and Christian-dominated settlements. Martial law's lasting legacy to Mindanao was to build deep cleavages between Moro and Christian inhabitants of Mindanao, a problem which persists up to this day.

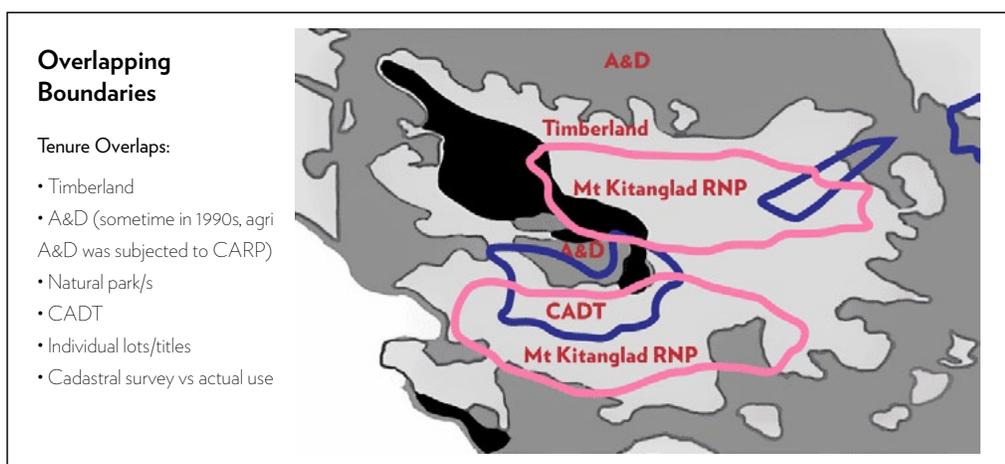
D. The Fourth Wave (mid-1980s up to the present): The Challenge of “Dealing with the Present”

52. **The land ownership situation and the issue of land dispossession in Mindanao became more complicated after the end of the Marcos authoritarian regime in 1986.** The legal and institutional framework became confused as a number of land-related laws were passed and institutions established to enforce them. The Comprehensive Agrarian Reform Law (CARL) of 1988 placed the entire country under land reform coverage and all lands regardless of crops planted. This strengthened individual ownership of land through titles granted by the state.
53. The Mining Act of 1995 promotes the development of the local mining industry to create jobs and generate revenues for the state. This Act will have far-reaching implications on landholdings in forest and

mountainous areas where precious minerals are found. Mindanao is a major potential investment site for mining because vast deposits of the country's gold (70%), copper (62%), nickel (47%) and chromite (40%) are estimated to be found on the island.⁴⁶ If able to fully develop, mining is expected to take over as a major source of wealth accumulation in Mindanao. Without effective regulation and supervision, however, this will have particular impacts on IPs because most mineral deposits are found in forest and mountainous areas which are claimed as part of the IP ancestral domain. The potential for violent conflict is very real, as seen in a number of IP communities in the Caraga region where mining is present.

54. The enactment of the Indigenous Peoples' Right Act (IPRA) in 1997 recognized the right of IPs to own their lands under communal ownership (i.e., ancestral domain).⁴⁷ The agency created to implement IPRA, the National Commission on Indigenous Peoples (NCIP), identified half of the entire area of the Philippines (15 million out of 30 million hectares) as IP lands.⁴⁸ Finally, through the Forest Code issued during the martial law, the Department of Environment and Natural Resources (DENR) categorized around 12 million hectares as forest land and protected areas. Overlapping claims on the same land by these agencies and their stakeholders has inevitably ensued (refer to **Map 9** below). This has become a common form of land problem, as Moro and IP communities have been pushed back to the highlands by the settlement of the lowland and coastal areas by Christian settlers.
55. Second, and as a result of the implementation of a series of land reform laws, a benchmark survey conducted in 1990 by the former Institute of Agrarian Studies, University of the Philippines, Los Banos, discovered that dominant tenurial arrangements in the provinces of Lanao del Sur and Maguindanao (in ARMM) and in neighboring Lanao del Norte, Sultan Kudarat and North Cotabato, includes share tenancy, leasehold, and owner-cultivator. This indicates that most of the lands in Mindanao, including the proposed Bangsamoro

MAP 9. Overlapping land property rights in and around Mt. Kitanglad Reservation and Natural Park in the province of Misamis



Source: World Bank (2016). Preliminary findings of the Mindanao Jobs Report

Note: RNP = Mt. Kitanglad Range National Park

46 Refer to Adriano (2015).

47 However, IPRA is not fully enforced in ARMM because NCIP, the agency which implements the law, is hesitant to operate in the region given its autonomous status. An equivalent agency, the Office of Southern Cultural Communities (OSCC), is operating in ARMM but does not have the power to release ancestral domain titles. IPs complain that the OSCC has not been effective because of pressure from local elites who have claims on IP lands.

48 Refer to WB-IOM (2013).

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area, are already claimed by individual or group claimants, though there is a need to verify whether the titles they hold were legally and fairly acquired. If so, their legally recognized rights over those lands cannot be superseded by any act that will disenfranchise them of their properties without either their consent and/or the payment of acceptable compensation.⁴⁹

56. Third was the creation of the Autonomous Region in Muslim Mindanao (ARMM), as a concession to the Moro National Liberation Front (MNLF), in 1989. The establishment of ARMM gave rise to a new set of local elites who consolidated not only political power but also control of the local economy, including land. Large chunks of land were placed under their control through timber license agreements, pasture leases, or by the simple act of titling lands under their name or their family members.⁵⁰ Many prominent families in the area now own or control large tracts of land.
57. ARMM's Regional Legislative Assembly (RLA) was further granted the right to create its own municipalities without Congressional approval, leading to the rise of 'IRA-less' local government units that do not fulfill the eligibility requirements for Internal Revenue Allotment (IRA) as provided for in RA 7160.⁵¹ As of 2015, twelve LGUs in ARMM do not receive IRA from the Department of Budget and Management. This has increased political boundary disputes and complicated the regulation of economic activity and service delivery in contested areas.
58. Fourth, the series of major vertical conflicts that erupted between the government and the Moro Islamic Liberation Front in 2000, 2003 and 2008, and horizontal conflicts that frequently occur between warring clans, ethnic groups, or political rivals have resulted in the regular displacement of people from their homes and farm lots. Many clan feuds become intertwined with vertical conflict when warring families are linked to either the government or major insurgent groups. Lands abandoned are, in turn, sometimes occupied by other landless tillers or claimed by powerful political families or clans. Conflicts are occasionally triggered precisely to generate displacement to facilitate land-grabbing. The absence of a central depository of data on land titles and updated cadastral survey for individual titles in ARMM increases the opportunity for grabbing of unoccupied and abandoned lands.
59. And fifth, growing land scarcity in Mindanao and the cultivation of high value commercial crops such as banana, pineapple, yellow corn, cassava, oil palm, rubber, cacao, coffee, vegetables and tropical fruits has increased land values.⁵² In a land abundant scenario, the demand for and price of land is low. But with land scarcity and the cultivation of crops which fetch high prices, land becomes a valuable commodity. Thus, the surge in land claims and competition for land ownership becomes more intense, if not violent.⁵³

49 In particular, the IPRA law of 1997 provided that land claims based on ancestral domain under IPRA cannot trump lands already titled to individuals or corporations.

50 During the Ramos administration, a number of Timber Licensing Agreements (TLAs) were granted to MNLF officials as part of the concessions in the signing of the GPH-MNLF Final Peace Agreement. At present, the mining industry boom has led a number of local officials in ARMM to engage in land speculation for mining exploration and exploitation.

51 IRA requirements include: a) a land area of 50 square kilometers; b) at least 25,000 in population; and (c) PHP 2.5 million in income for the last two consecutive years based on 1991 constant prices.

52 Field visits to farms in Maguindanao and adjoining provinces by WB teams working on agriculture-related issues have noted that land prices have more than doubled from P50,000-100,000 per hectare to P150,000-200,000 per hectare due to the shift of cultivation from low value crops such as corn and cassava to high value crops like bananas and palm oil. The presence of agribusiness companies or processing mills for these high-value crops ensure a ready market.

53 Refer to WB-IOM (2013).

60. This combination of historical forces, legal and institutional changes, violent conflict, growing land scarcity and rising land prices has produced a variety of land conflicts in the proposed Bangsamoro area—between Moros and IPs, Moros and Christians, and among Moros themselves. It is evident, therefore, that in light of the complexity of the land situation in Mindanao, the search for solutions must be seen not only through the lens of historical injustice committed by the central government and Christian settlers against Moros and IPs, but also reflect contemporary injustice driven by land grabbing and violent conflict. The next section will explore these and other multiple causes of land dispossession in more detail.

BOX 2. Dealing with the Present: Community, Identity, and Subsistence Farming in Upi, Maguindanao

M's family migrated from Capiz, Iloilo in the 1960s, but the rolling hills and valleys of South Upi, Maguindanao are the only home he has ever known. A remote 27 kilometers away from the poblacion, and at least three hours away from Cotabato City, it is a beautiful place to live a hard life.

M was born on the same 2.5-hectare plot his family has tilled for the last four decades, eking out a living by growing yellow corn, to be painstakingly shelled, dried, and sold for animal feed. Some of his Teduray neighbors still practice *kaingin*, traditional slash-and-burn agriculture that has left the once-verdant hillside parched and eroded. In the meantime, M and most farmers have converted to modern production techniques, and in so doing remain perpetually in debt to traders from Cotabato City.

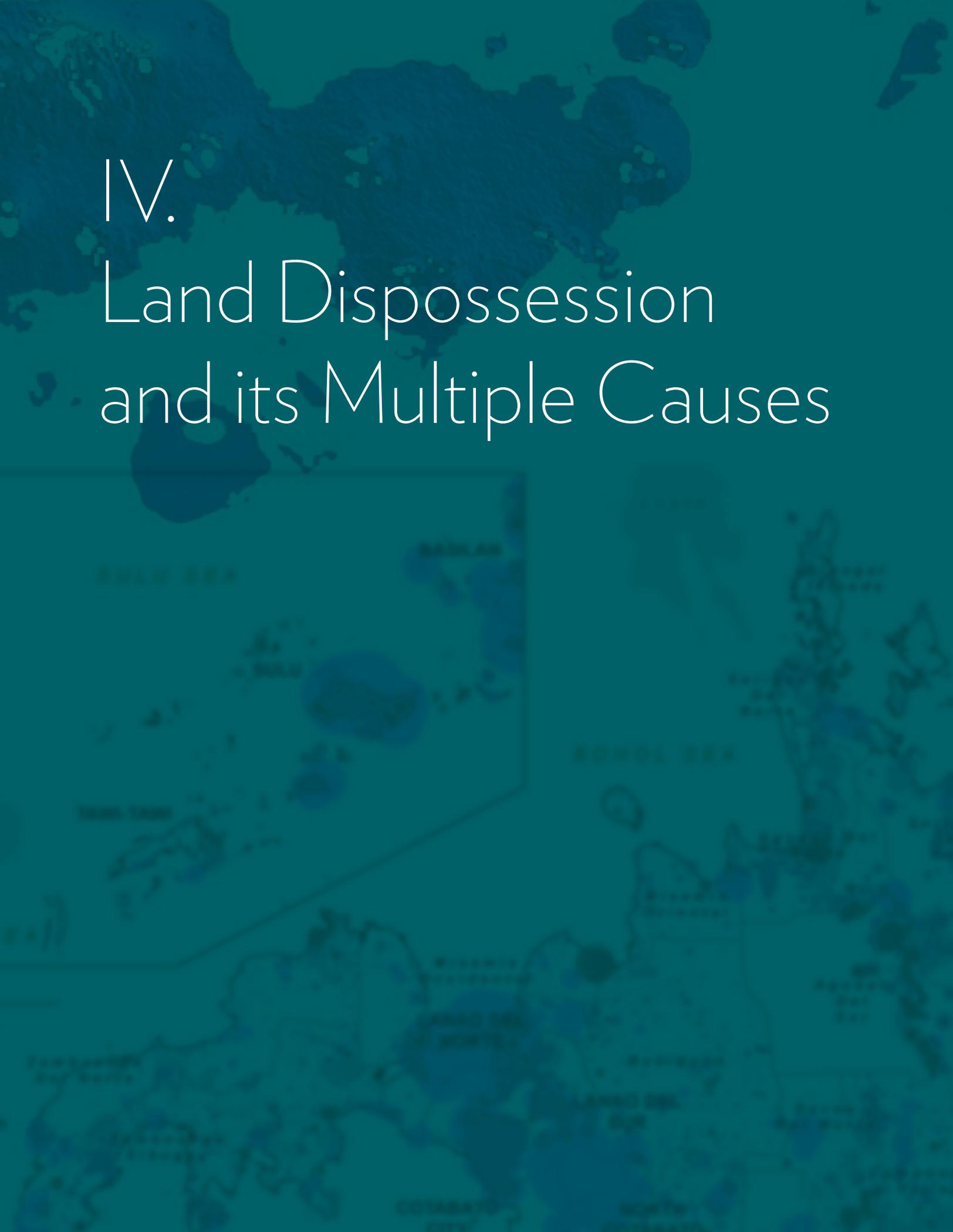
Because of their community's remoteness—thanks to limited roads and streams that are impassable with the lightest rainfall—corn traders buy the crop direct from M and his fellow farmers at source, at a cheaper guaranteed buying price. These traders have also become the main source of credit. Loans come in the form of seeds, fertilizers, pesticides, and cash for payment for farm labor and other expenses. Some traders also rent out post-harvest facilities such as dryers and corn shellers, a service that can make the difference between a profitable harvest and a loss.

M speaks of cases where Teduray and settler farmers have had to pawn land to cover outstanding debts, becoming tenants in their own homes. This exacerbates age-old tensions around ethnicity, class, and land. While the corn traders are Maguindanaoan and settler elite from the city, the people of Upi have not forgotten the battles fought in the 1970's by the Ilonggo-led militia, the *Ilagâ*, alongside some Teduray, against their Moro neighbors. Others go back even further, and decry the settlers' encroachment on Teduray ancestral land under the auspices of the Philippine Government's homesteading policies.

Interfaith dialogue and development programs have worked to seal the breach. One point of healing is the story of brothers Tabunaway and Mamalu, said to be the ancestors of Mindanao's Islamized and non-Islamized groups. One version of the legend goes that Tabunaway chose to meet Shariff Kabunsuan, the Muslim cleric who first spread the Islamic faith to Central Mindanao, and thereby became the ancestor of the Maguindanaoans. Mamalu, on the other hand, decided to scale the mountains to keep the old culture alive, and thus became the father of the Teduray and the Manobo. The brothers swore to share the blessings of field and mountain with each other through peaceable trade and mutual protection – a narrative that underpins the current framework of IP-Moro relations.

But there are no legends to bind M and his fellow settlers from Luzon and Visayas to this place, despite this being the only home they have ever known. All they have is the corn crop that barely sustains their children, and their connections to hill and valley, field and sky.

Written by Ica Fernandez



IV.

Land Dispossession and its Multiple Causes

IV. Land Dispossession and its Multiple Causes

61. **The previous section chronologically described four waves of land dispossession which generated dramatic changes on the Mindanao landscape.** Yet, the recount of history and this report's definition of "land dispossession" also clarifies that the widely held view that all northern migrant resettlement of communally-held lands by the Moros and IPs in Mindanao was an act of land dispossession is not fully accurate for a number of reasons. First, many early settlers, as far as up to the 1950s, were welcomed by Moro leaders. Second, land laws enforced during that time were applied nationally, also dispossessing other tribes across the Philippine Archipelago by more educated and opportunistic members of society. Partly, this was the trigger for the massive social unrest in the countryside that occurred from the 1930s to the 1950s, when the local communist movement reached its peak.⁵⁴ And, thirdly, it is important to note that not only Christians but some Moros, particularly coming from the elite class, were able to title large tracts of lands in their names.
62. **Thus, while land dispossession did occur, it was triggered not by a single factor but by multiple causes, either separately or in combination.** This report identifies five key drivers of land dispossession in Mindanao:
- a. Weakness of the state apparatus (and hence absence of effective governance);
 - b. Laws, policies and programs prejudicial towards Moro and IP ownership of lands;
 - c. Operation of unregulated commercial interests;
 - d. Conflict-related displacement; and
 - e. Displacement related to environmental factors.

A. Weakness of State Apparatus

63. Land-related laws enunciated by the colonial powers, particularly during the American colonial regime, were applied nationwide.⁵⁵ Thus, the experience of land dispossession was not unique to Mindanao but also occurred in other parts of the country among original inhabitants (e.g., Cordillera, Mindoro, Zambales, etc.)

⁵⁴ The issue re-surfaced during the 1970s when martial law was declared. The resurgent local communist movement, this time the Communist Party of the Philippines/New People's Army/National Democratic Front (CPP-/NPA/NDF), used land grievances among the peasantry to rally support.

⁵⁵ The laws repeatedly identified as prejudicial against Moro ownership of land in historical accounts and discussions by Moro scholars are the imposition of the Regalian doctrine of land ownership, the introduction of the Torrens title system (Land Registration No. 496 of 1902), Act No. 718 of 1903 (declaring null and void land grants awarded by Moro sultans, datus or chief of non-Christian tribes), and Public Land Act No. 926 (declaring all lands not registered under Act 496 of 1902 as property of the government). Other laws and policies cited can be found in **Annex D**.

and illiterate peasants. What is unique to the Mindanao case—in the process exacerbating social, political and economic impacts against Moro and IP communities—was the weakness of the state apparatus. As noted earlier, neither the Spanish nor the Americans gained a strong foothold in Mindanao, and the nascent independent Republic was still working to establish a functioning state apparatus. In many parts of the island, government was either absent or present only in the form of military personnel. As noted in Pastor-Roces (2015a), the Philippine Constabulary was the only representative of the government in many remote areas. “There was no other, just the Constabulary!” said a General who served in the area at the time.⁵⁶ Another indication of the weakness of the state was the absence of a functioning public education system. In 1960, for instance, the high school enrolment rate in Cotabato, Lanao del Sur and Sulu provinces was two percent, as against 18 percent for the entire Philippines. Lanao province had no public high school and “not a single permanent elementary school building.”⁵⁷

64. Constant changes in politico-administrative arrangements, geographical remoteness, and the relative absence of a sizeable literate or educated class proficient in the English language made matters worse. The central government in Manila did not have enough staff to properly govern Mindanao and had little knowledge of the plight of its inhabitants due to its remoteness. The area was left to the dictates of military personnel stationed in the island and their business partners. This partly explains why the early push for the secession of Mindanao from the Philippine Archipelago was led by former American military officers and their civilian partners who had invested heavily in plantation agriculture in various parts of Minsupala.⁵⁸
65. The weakness of state institutions was exacerbated by the cycle of abolition of governance structures and their accordant territorial scope. The militarized Moro Province (1903-1914) used the tribal ward system employed for native Americans, which treated the Moro tribes as “wards” protected by the US government. In reality, however, US laws could only be implemented through influential datus and in the areas they controlled. This was quickly replaced by the civilian-controlled Department of Mindanao and Sulu (1914-1920), before being subsumed under the Bureau of Non-Christian Tribes (1921-1935). Responsibility for the areas during the Commonwealth period (1935-1946) was handled by a Commissioner for Mindanao and Sulu and the Office of the Commissioner for Mindanao. Regular provinces were eventually created under the Philippine Republic (1946-onwards). Upon the granting of independence in 1946, the Commission on National Integration (CNI) was created to completely assimilate “non-Christian Filipinos,” and later, “National Cultural Minorities” into the Christianized Philippine nation ‘by all adequate means and in systematic, rapid and complete manner’ and to encourage their ‘moral, material, economic, social and political advancement’ (Sec. 1, RA 1888).⁵⁹

56 Pastor Roces (2015a), page 127. Other sources suggest that even the Constabulary numbers were very slim.

57 Filipinas Foundation (1971) “An anatomy of Philippine Muslim affairs: A study in depth of Muslim affairs in the Philippines.” Makati, Rizal: Filipinas Foundation at page 102. Thanks to Prof. Patricio Abinales for the source.

58 Refer to Pastor-Roces (2015) “Timeline” and the list of plantations established in Mindanao during the early rule of the American colonial period. See Gaspar (2015), Villano-Campado (2007), Ulindang (2014), & Lacson (n.d.).

59 The CNI was abolished in 1975 with the creation of the Southern Philippines Development Authority (SPDA) through Presidential Decrees No. 690, 719 and 1703 as the agency responsible for the ‘initiation and/or implementation of development projects in Southern Philippines.’ Instability would continue with the creation in 1978 of the Office of the Presidential Assistant on National Minorities (PANAMIN) to address the needs of all non-Muslim minorities, complementary to the work of the 1981 Ministry of Muslim Affairs (MMA), later the Office of Muslim Affairs and Cultural Communities (OMACC). When President Corazon Aquino assumed office, the OMACC was replaced by three bodies under the Office of the President: the Office for the Muslim Affairs (OMA) created through E.O. No. 122-A; the Office for Northern Cultural Communities (ONCC) created through E.O. 122-B; and the Office for Southern Cultural Communities (OSCC), created by E.O. 122-C. OMA was abolished in 2008 with the creation of the National Commission on Muslim Filipinos (NCMF). The powers and functions of the ONCC and OSCC were merged as organic offices of the National Commission on Indigenous Peoples (NCIP), which was created through RA 8731, or the Indigenous Peoples Rights Act of 1997. However, the Office for Southern Cultural Communities

66. A plethora of new institutions was created during the Marcos era onwards, with mandates related to Mindanao's political, cultural, and economic welfare. Following the 1976 Tripoli Agreement, Marcos unilaterally created the autonomous Regions 9 and 12 in 1979. This eventually led to the establishment of ARMM in 1989 (under the Cory Aquino administration) by virtue of Republic Act No. 6734, later modified through RA 9054 in 2001 (under the Macapagal-Arroyo government) in response to the 1996 Final Peace Agreement with the Moro National Liberation Front.

B. Prejudicial Laws, Policies and Programs

67. As discussed earlier, the American colonial regime passed a series of laws that were prejudicial against Moro and IP ownership of land. On top of these laws were programs to facilitate control by American agricultural corporations of thousands of hectares of land and the establishment of "agricultural colonies" for northern settlers willing to venture to Mindanao.
68. The creation of the National Development Corporation (NDC) in 1919 was intended to encourage American agricultural production and processing firms to enter Mindanao. As a government-controlled corporation, NDC had the power to enter into joint-venture agreements with any firms willing to invest in Mindanao. It searched for land suitable for plantations and facilitated land consolidation for prospective investors. In the process, it displaced a number of original inhabitants in those areas. As a result of NDC's work, several American agribusiness corporations, such as BF Goodrich, Del Monte, Goodyear, and Firestone, established plantation operations in Mindanao.
69. Many of these agricultural colonies and resettlement areas were established in communities whose land was under the control or supervision of tribal leaders or held as communal property by the original inhabitants. Their lack of formal title (under the Regalian doctrine of land ownership) meant that government could dispose of them in line with the national interest. Given the goal of modernizing Mindanao's agriculture and promoting greater cultural integration between the Christians and the Moros and IPs, the government deemed that the best use of this land was to encourage ownership and cultivation by northern Christian settlers. It was noted previously that many who took advantage of the resettlement programs were active and retired military officials and their relatives. Later, in the late 1940s and the 1950s, specific resettlement programs were designed for rebel returnees of the Huk movement, including the EDCOR program. Both groups of settlers were accustomed to the instruments of violence.
70. The combination of land ownership uncertainty and the influx of settlers accustomed to resorting to violence to settle differences created an explosive situation. Thus, as land became increasingly scarce in the 1960s and 1970s, land disputes became more frequent. In the absence of functioning dispute-resolution mechanisms and institutions, resorting to violence became inevitable for some parties. The formation of the Ilagâ paramilitary group by some Christian settlers supported by some IPs, and the Blackshirts by some Moros clearly demonstrated that land grabbing and dispossession had reached a point where peaceful settlement of the conflict had become impossible. The establishment of the Moro National Liberation Front (MNLF)

(OSCC) remains active as a devolved agency of ARMM, although it functionally overlaps with NCMF and NCIP.

in the 1970s saw the systematic articulation of the land problem as a key component of the Moro struggle. The response of the Marcos martial law regime was to suppress this demand by sending thousands of government troops to suppress the Moro rebels. The intensification of the conflict exacerbated a cycle of violence, displacement, and dispossession.

C. Unregulated Business Interests

71. Records show that the entry of American firms in plantation operations led to land consolidation and displacement of the original inhabitants. Filipino economic elites also established agricultural companies in the area. Logging and mining in Mindanao became a favored investment option for Filipino entrepreneurs in the 1950s (after the country gained independence from the US) until the 1970s due to the huge windfall profits on offer. Numerous Timber Licensing Agreements (TLAs) and mining permits were granted by the national government to influential Filipinos and Moro elites, often as a reward for loyalty to the Marcos regime. The rush to exploit forest and mineral resources resulted in massive destruction of forest cover and further displacement of the original inhabitants (mostly IPs) in the logging and mining concession areas. Once forests were denuded, control over the logged areas mostly remained in the hands of the TLA grantees, who were then awarded pasture leases by the government to the same property.

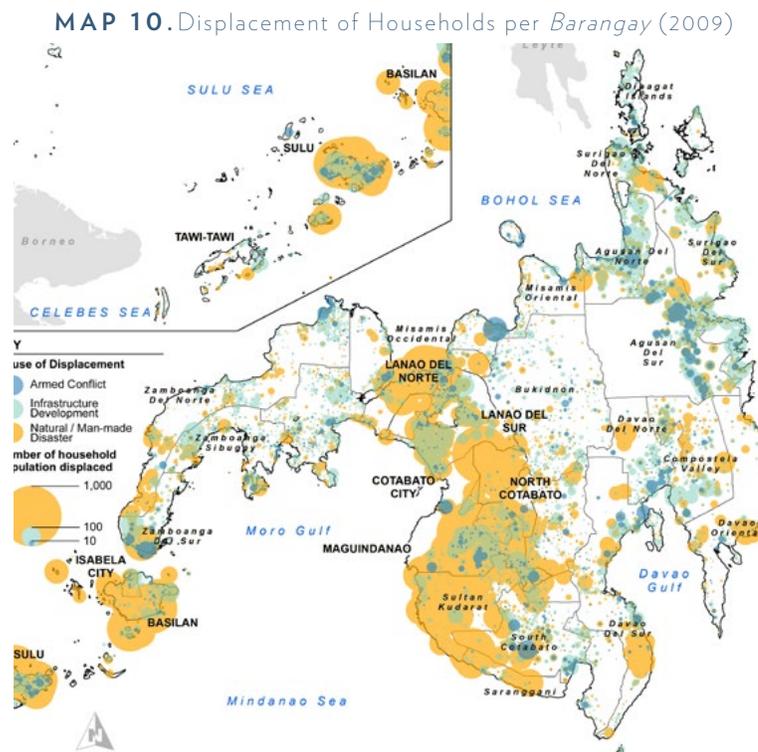
D. Conflict-related Displacement

72. Past violent conflicts (i.e., involving the Ilagâ and the Blackshirts, and large-scale conflict between government forces and MNLF fighters in the 1970s) displaced large numbers of people. Many were unable to return to their places of origin, and as a result, lost their land. In contemporary times, major confrontations between the MILF and government troops (notably in 2000, 2003 and 2008), and those fought along horizontal lines (i.e., Moros versus Christians, Moros versus Moros, Christians versus IPs, etc.) resulted in regular waves of displacement. A 2010 survey on the incidence of displacement in ARMM and surrounding provinces, showed that 41 percent of the adult population in the surveyed areas had experienced displacement during the ten-year period prior to the survey (WB-WFP 2010). The problem is particularly acute in Maguindanao, where more than four out of five households (82%) reported at least one episode of forced displacement in the ten year period prior to the survey. In Lanao del Norte and Lanao del Sur, the prevalence of displacement over the ten-year recall period was close to half the households (48% and 47%, respectively). In North Cotabato, displacement had affected 26 percent of households and in Sultan Kudarat and Cotabato City, just over one out of ten households reported displacement (11%) at some point in the last ten years.
73. Of the total number of respondents who had been displaced but managed to return to their place of origin, only 72 percent were able to retrieve their farmland. For the other 28 percent, this suggests they were either forced to sell their land to meet basic needs and restore livelihood, or that others occupied their land while

they were displaced. This could indicate land-grabbing on a wider scale. As noted earlier, conflicts at the local level are sometimes explicitly engineered for the purpose of land grabbing.⁶⁰

E. Environment-related Displacement: Natural Disasters

74. **Map 10** shows DSWD National Household Targeting System (NHTS) data from 2009 on displacement in Mindanao, illustrating the number of households where a family member had been displaced in the last 12 months prior to the survey, whether from armed conflict, infrastructure development, or natural disaster.⁶¹ The data shows substantial displacement due to armed conflict. However, it is also clear that severe deforestation and destruction of watershed areas, combined with extreme weather events, has led to significant annual displacement of people residing in flood-prone, vulnerable and fragile areas. Thousands of people are displaced in Cotabato City, the low-lying areas of Maguindanao and North Cotabato and other communities along the coast of the Rio Grande de Mindanao during the annual rainy season. Rivers, lakes, and other water bodies have become shallower because of continual soil erosion, triggering flash floods whenever a sudden downpour occurs. These areas, particularly those in the second district of Maguindanao adjacent to the Liguasan Marsh, have to contend with both natural and man-made calamities at regular intervals.



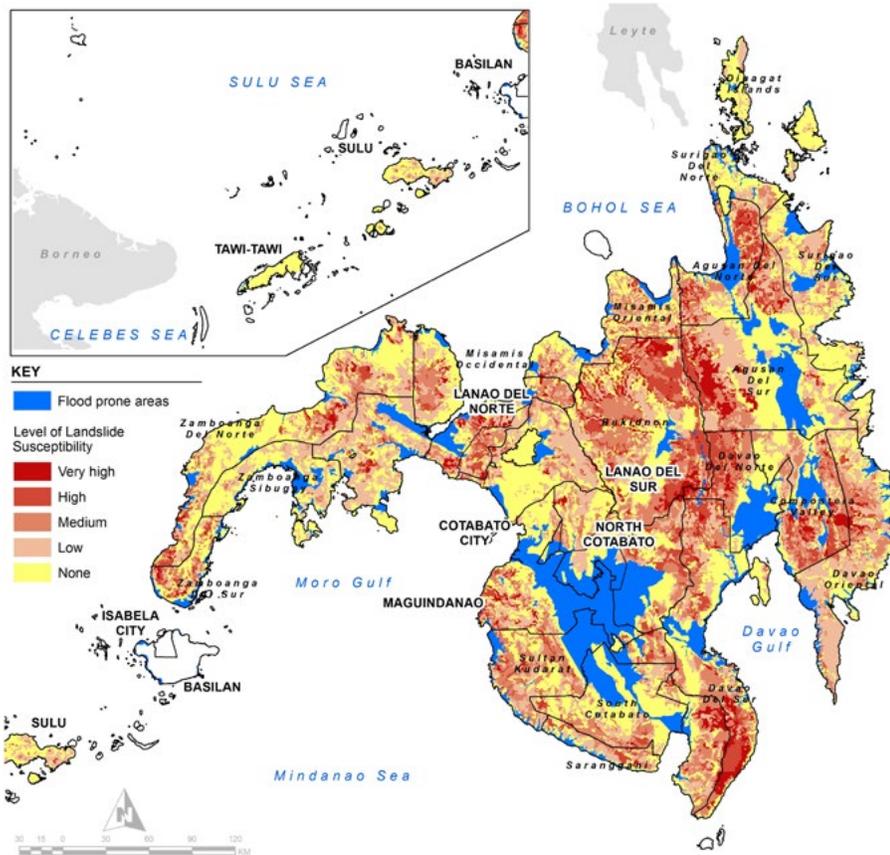
Source: World Bank (2016). Preliminary findings of the Mindanao Jobs Report.

60 See Colletta (2011), "The Search for Durable Solutions: Armed Conflict and Forced Displacement in Mindanao, Philippines."

61 National Household Targeting System database, now called *Listahanan*.

75. With rising population growth and increasing land prices, settling in vulnerable and fragile areas has become the only option for some of the poor. **Map 11** illustrates the scope of flood-prone and landslide-susceptible areas in Mindanao as of 2008. The flood-prone areas are where most of the Bangsamoro reside such as in the provinces of Maguindanao, North Cotabato, Lanao del Sur, and the coastal areas of the Zamboanga peninsula. Moreover, the provinces of Lanao del Sur and Lanao del Norte are highly susceptible to landslides because most of their forest areas have been cleared. Given these geographical locations, displacement among the Bangsamoro caused by natural disasters is likely to rise in the future.

MAP 11. Disaster Vulnerability in Mindanao



Source: JICA SERD-CAAM 2008

V.

Social, Political and Economic Impacts of Land Dispossession



V. Social, Political and Economic Impacts of Land Dispossession

76. **The four waves of dispossession gave rise to profound social, political, and economic impacts.** The first wave (from 1898 up to the Commonwealth period) laid the policy foundation for the systematic land dispossession of Moros, IPs and other original inhabitants of Mindanao. These policies sought to increase agricultural productivity and colonial government revenue, while promoting greater cultural integration between Christians, Moros, and IPs.⁶² A shift in the source of wealth accumulation from “people-based” to “land-based” resources transpired during this period.
77. The second wave (from 1946 up to the late 1960s) witnessed the massive migration of northern settlers to Mindanao as the central government sought to provide “land to the landless” to address the social unrest spawned by widespread landlessness and exploitative share tenancy arrangements in Central Luzon and the Visayas.⁶³ Some of the resettlement was through government-sponsored programs. Other people, often the relatives or friends of the original settlers, migrated spontaneously, without government assistance, to exploit the relative land abundance. During the same period, the logging and mining industries were developed in Mindanao to generate much-needed foreign revenues in support of the government’s “import-substitution industrialization” strategy.
78. The third wave (the 1970s up to the mid-80s) saw growing social tension between settlers and the Moros and IPs. Early unfair policies on land ownership between Christian settlers and Moros/IPs eventually broke into open hostilities as land scarcity began to kick in and, more importantly, the martial law regime tacitly or explicitly supported the Ilagâ vigilante group. This period also saw a rapid depletion of Mindanao’s forest resources as the Marcos regime freely awarded TLAs to loyal supporters or to co-opt opponents.
79. The fourth wave (the mid-1980s up to the present) was characterized by the pro-democracy and anti-monopoly thrust of the Cory Aquino government, which led to the passage of a number of laws (i.e., CARP, the creation of ARMM, and IPRA) meant to broaden ownership of land resources. However, these well-intentioned initiatives contributed to the contemporary legal and policy confusion that has often been exploited for land grabbing, further complicating the task of finding solutions to land dispossession.
80. The subsequent discussion describes the key social, political, and economic impacts of resettlement and land dispossession on Moros and IPs in particular and the Mindanao economy in general.

62 This was carried out through the implementation of the following combined policy measures: a) affirmation of the Regalian land doctrine; b) imposition of the Torrens land titling system; c) passage of a number of laws that were prejudicial against Moro and IP ownership of land; and d) active promotion of settlement of Mindanao by American-owned plantations and Christian settlers to Mindanao.

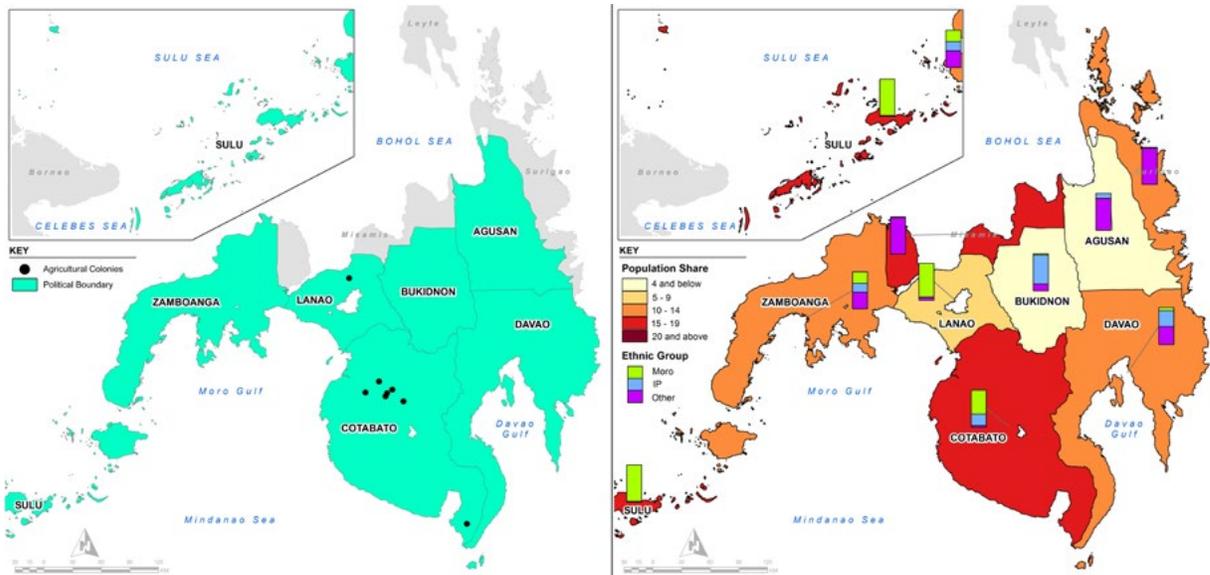
63 The “land to the landless” program by the central government during this period achieved a number of objectives besides easing agrarian unrest in Luzon and Visayas, including: a) successful settlement of a large number of Christian migrants to Mindanao; b) exploitation of the natural resources of Mindanao to support national development; c) greater exposure of Moros and IPs to the culture of the dominant Christian population; and (d) consolidation of central government power in Mindanao after the grant of Philippine independence by the American colonial ruler.

A. Dramatic Change in the Ethnic Composition of the Mindanao Population

81. **Government resettlement policies “minoritized” Moros and IPs in their homeland.** From 41 percent in 1903, the Moro share of the population in Mindanao marginally declined to 38 percent in 1918 (refer to **Maps 12 and 13**) but plunged to 20% by 1939. The same trend is evident in the former Moro Province, where the population share of Moros declined from 69 percent (1903) to 60 percent (1918) and then 28 percent by 1939. The drop in the share of Moros was particularly significant in the provinces of Cotabato and Davao. The share in Cotabato declined from 90 percent in 1903 to 65 percent in 1918 and 53 percent by 1939. In Davao, this share dropped to almost nothing from 21 percent in 1903. The same trend is evident in the other Moro provinces. In Lanao, the Moro share of the population declined from 91 percent in 1918 to 68 percent in 1939; from 98 to 80 percent in Sulu and Tawi-Tawi; and from 30 to 2 percent in Zamboanga.⁶⁴

MAP 12. Early Resettlement Programs under the Department of Mindanao and Sulu (1916)

MAP 13. Mindanao Population (1918)



Sources: Philippine Commission Act No. 2408 series of 1914 creating the Department of Mindanao and Sulu, 1918 Census of the Philippines

82. Over the 21 years between the censuses of 1918 and 1939, the average annual population growth of the Moro and IP population in Mindanao and the Moro province was 0.5 and 2 percent, respectively. The non-Moro/non-IP population, on the other hand, grew by 6 percent per year in Mindanao and 10 percent

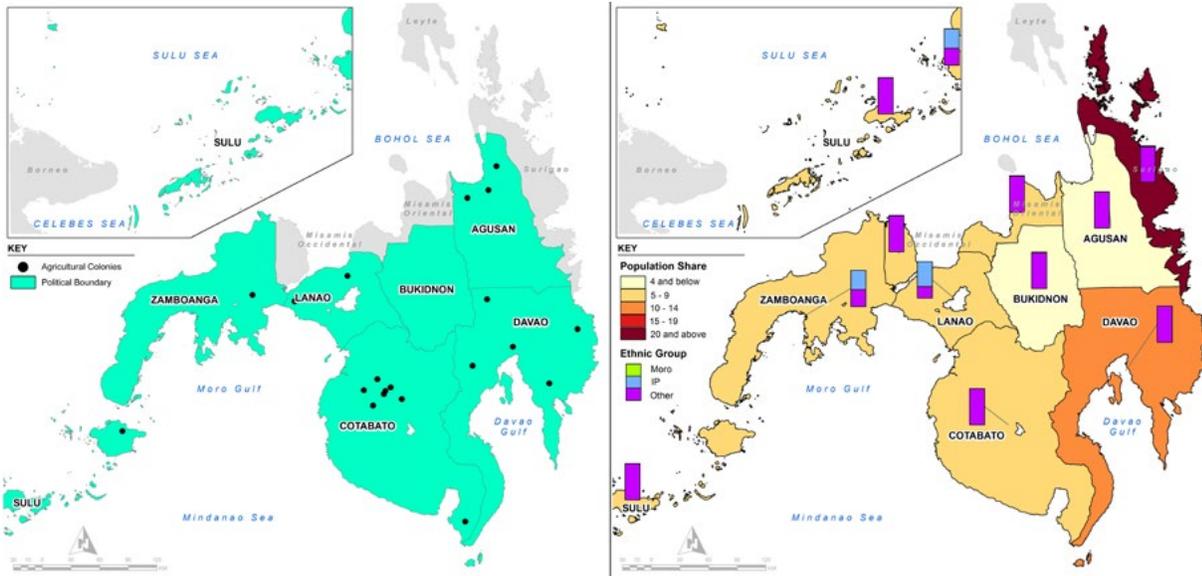
64 It should be noted that comparability between the different censuses is not perfect. For the 1903 and 1918 censuses, Moros were identified as followers of the *Mohammedan* faith. For 1939, Moros were identified as those whose languages belong to the 13 ethno-linguistic groups as enumerated by Rodil (1994): Iranun, Jama Mapun, Kalagan, Kalibugan, Maguindanao, Maranao, Molbog, Panimusan, Sama, Sama Dilaut (or Badjao), Sangil, Tausug, and Yakan. The extent of “Moro-speaking” population that changed their faiths therefore biases the estimates. Except in Samal, Davao, where conversion of Moros and IPs was reported to be high in the early censuses, the numbers in other areas, particularly in the Moro Province is assumed to be minimal. The overall picture is clear, however, that a major social shift occurred in the first half of the 20th century that saw the Muslim share of the population in Mindanao decline rapidly and significantly.

LAND: TERRITORY, DOMAIN, AND IDENTITY

per year in the Moro Province. Noting that the average annual population growth rate in the entire country during the period was only 2 percent, the significantly higher population growth rate in Mindanao can only be accounted for by the migration of northern settlers.⁶⁵ While early settlements (refer to **Maps 12** and **13**) were mainly concentrated in Cotabato and Lanao in 1918, **Maps 14** and **15** show the opening of new settlement sites in Agusan, Bukidnon and Davao by 1939.

MAP 14. Agricultural Colonies (1935)

MAP 15. Mindanao Population (1939)



Sources: Population Census of 1939

83. By 1970, the mix of Moros and IPs to Christians in Mindanao was 18 to 82 percent, respectively, from the 1903 figure of 52 percent to 48 percent (refer to **Maps 16** and **17**).⁶⁶ Thus, land dispossession through the various land policies and resettlement programs (which also triggered spontaneous migration of settlers) of the government resulted in the “minoritization” of the Moros and IPs in their own land.
84. **Table 2** summarizes Mindanao’s population and ethnic composition based on government population censuses from 1903 to 2010. In 1903, Moros comprised a significant share of the population at 41 percent, IPs at around 11 percent and “others” (Christian settlers, natives converted to Christianity and foreigners) at almost 48 percent. By 1939, the share of Moros to total population shrunk to around 20 percent, while the IPs slightly increased to 17 percent, and “others” ballooned to almost 69 percent of the total.⁶⁷ By 1980, Moro

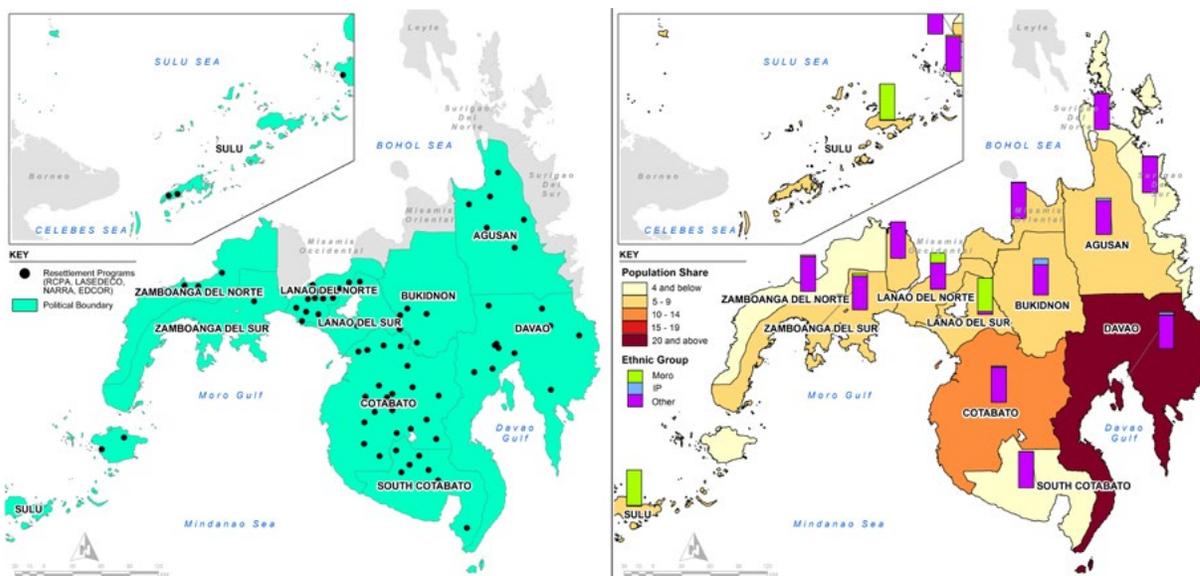
65 Despite these developments, major social upheaval was not evident during this first wave. This is because land remained plentiful, population pressures were not extreme and the shift to an agriculture based economy was still nascent. Historical records (Pastor-Roces 2015 and 2015a; Villano-Campado n.d.; Ulingang 2014; and Lacson n.d.) also noted that in many cases, the original inhabitants welcomed the settlers, seeing them as bringing in valuable knowledge on new agricultural techniques as well as a willingness to clear forested land for agriculture.

66 The numbers derived from the 1970, 1980, and 1990 censuses are estimates from available electronic files, which are samples of the census. Provided population weights were used to estimate the population at the municipality level. Complete census data are only available for the 2000 and 2010 censuses.

67 The significant drop in the share of IPs between 1939 and 1960 is most likely due to the interaction of IPs to the general population, particularly adopt-

MAP 16. Political Boundaries and Resettlement Sites (1966)

MAP 17. Political Composition (1970)



Sources: RCPA, LASEDECO, NARRA, EDCOR, Official Gazette, LGSPA (2009), Rodil (1994), Huke (1973), Silva (1978), Gowing (1969), 1970 Census of the Philippines

population further declined to around 17 percent and IPs to 2 percent, while “others” rose to over 80 percent. The dramatic increase in the population of “others” can be accounted for by the massive resettlement of northern Christian settlers. During the first post-Marcos census in 1990, the share of Moros in Mindanao bounced back slightly to 24 percent and IPs to 5 percent.⁶⁸

85. Between 1980 and 1990, the annual population growth of Moros in Mindanao was 6 percent, compared to overall average population increases of 3 percent in Mindanao and 2 percent nationally during the same period. These increases in the Moro and IP population can be explained by a number of factors: a) the abatement of armed conflict in Moro and IP communities with the downfall of the martial law regime; b) the respite in hostilities in these communities enabled government delivery of basic services; and c) the closure of the Mindanao “land frontier” as a result of massive migration in the past no longer made the island an attractive resettlement site for northern cultivators. The Moro population settled at an average of 21 percent between 2000 and 2010.⁶⁹ The data shows dramatic increases in IP population. From around 5 percent of the total population in 1990, it rose to an average of 11 percent between 2000 and 2010. This is largely explained by changes in how ethnicity was defined in the censuses of 2000 and 2010. Nevertheless, it can be pointed out that due to the waves of resettlement the Moros and the IPs have become minority groups in their homeland.

ing the lingua franca widely spoken by the settlers

68 The ethnicity data for the censuses between 1939 and 1990 are generally comparable since all these use language spoken or dialect at home or early childhood as basis (see *Section II, Data Limitations*).

69 While language spoken was the basis prior to 2000, the 2000 census defined ethnicity based on self-ascription and the 2010 census defined ethnicity by blood. Historically, the IPs assimilated to the majority population much more than the Moros.

TABLE 2. Population by Ethnic Group in Mindanao (1903-2010)

	Population in Mindanao					Population in Moro Province				
	Moro (%)	IP (%)	Moro & IP (%)	Other (%)	Estimated Population (in millions)	Moro (%)	IP (%)	Moro & IP (%)	Other (%)	Estimated Population (in millions)
1903	41.1	11.4	52.4	47.6	0.67	69.1	10.2	79.2	20.8	0.40
1918	37.5	16.8	54.3	45.7	1.12	60.2	19.9	80.1	19.9	0.69
1939	19.6	11.0	30.6	69.4	2.36	27.9	12.5	40.4	59.6	1.65
1948	20.8	9.5	30.3	69.7	2.94	32.0	11.8	43.8	56.2	1.91
1960	19.6	3.8	23.3	76.7	5.39	26.8	2.9	29.7	70.3	3.92
1970	14.7	2.7	17.5	82.5	7.96	24.2	2.9	27.1	72.9	4.83
1980	17.4	2.4	19.8	80.2	10.85	24.0	1.8	25.7	74.3	7.87
1990	23.6	4.7	28.2	71.8	14.30	31.9	3.2	35.1	64.9	10.49
2000	19.2	7.2	26.4	73.6	18.13	27.5	7.2	34.8	65.2	12.57
2010	22.2	13.4	35.6	64.4	21.97	29.9	11.1	41.0	59.0	16.12

Sources: Estimated from various official Philippine population censuses

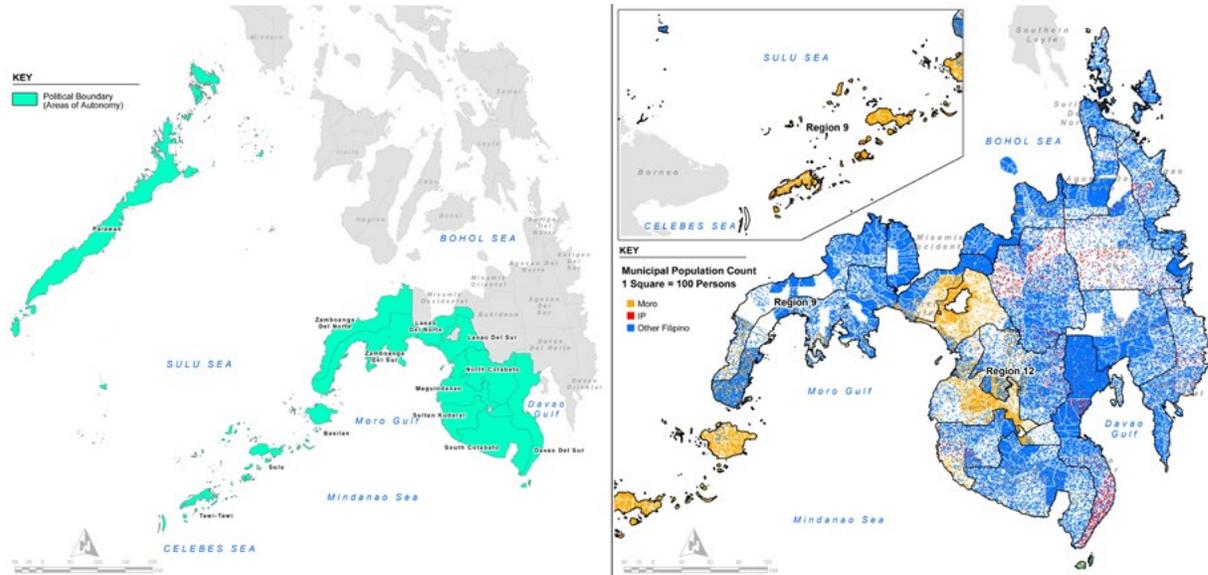
B. Ethnic Segregation

86. **The waves of resettlement not only “minoritized” Moros and IPs in Mindanao but also intensified ethnic segregation.** In 1903, 1918, and 1939, early Christian resettlement communities were widely dispersed within areas occupied by Moro and IP groups. The Moro Province comprised 69 percent Moros and 10 percent IPs in 1903. But by 1980, this had shrunk to 24 and 2 percent, respectively, and 75 percent of the Moros in Mindanao had become concentrated in only five provinces: Basilan, Lanao del Sur, Maguindanao, Sulu, and Tawi-Tawi (refer to **Maps 18 and 19**). This constrained interaction with other ethnic groups in the island. Statistically on average, there is only a 19.8 percent chance that a member of a particular ethnic group (Moro, IP, non-Moro/IP Filipinos or foreigner) in any given *barangay* in the study area will meet members of other ethnic groups.⁷⁰ This level of segregation can engender misunderstanding and mistrust.
87. In contemporary times, this ethnic segregation and concentration has affected the extent of territory being claimed as part of the Moro ancestral domain. The MILF negotiating panel is only claiming the five ARMM provinces and a selection of adjoining municipalities in Lanao del Norte and *barangays* in North Cotabato to be part of the core Bangsamoro territory. This is greatly reduced from the original demand of 14 provinces

70 This refers to the weighted average of the neighborhood (or *barangay*-level) ethnic diversity in the study area in 2010. The computation is based on the ethnic diversity (or fractionalization) index which is widely used to measure the concentration of one ethnic group relative to other groups in the population in a given locality. The measure is defined as the probability of two randomly selected individuals in a locality will be from different ethnic groups. The probability is constructed from the population shares by ethnic groups. An ethnic diversity of 19.8% reflects the division between the majority Moro (58.4%), Filipino settlers (35.4%), IP (6.1%) and Foreigners/aliens (0.1%) in the study area as of 2010. This also implies that there is an 80.2% chance that a particular member of an ethnic group in any *barangay* will meet someone from his/her own ethnic group.

MAP 18. Territories Being Claimed by the MNLF under the 1976 Tripoli Agreement

MAP 19. Mindanao Population as (1980)



Sources: 1976 GPH-MNLF Tripoli Agreement, Census of the Philippines

under the 1976 Tripoli Agreement (refer to **Map 18**). The claim is imbued by a sense of realism that it would be difficult for the Bangsamoro Government to govern an area where the residents are from a different ethnic group and religious affiliation, despite historical claims.

C. Diminution of Local Political Power

88. **As the demographic composition of Mindanao shifted, settler communities were converted into *barangays*, municipalities and provinces to consolidate political power.** In this manner, the settlers converted their growing economic influence into political control. The old Cotabato and Lanao provinces were divided into several sub-units, recognizing that certain areas of the provinces were now dominated by Christian settlers. The old Lanao province was split into Lanao del Norte and Sur in 1959. The old Cotabato province was gerrymandered into two provinces in 1967: Cotabato and South Cotabato. Three other provinces, Maguindanao, Sultan Kudarat, and North Cotabato were created out of the old Cotabato province through a Presidential Proclamation under the Marcos martial regime in 1973. That same year also saw the separation of Basilan from Zamboanga, and Tawi-Tawi from Sulu, respectively.
89. **Table 3** illustrates the waves of creation of new provincial and municipal government units in the former Moro Province from 1914 to the present day. From the third wave onwards, many former Civilian Home Defense Force and Philippine Constabulary officers became local chief executives of these newly-created municipalities, bringing a military-style of leadership and, often, a background in violence. Majul (1985) notes that in areas where Muslims had become a minority, no Muslim was elected to a political office.⁷¹

71 It should be noted, however, that there are now a few Muslim local chief executives in non-Muslim majority areas in Mindanao.

TABLE 3. Creation of Provinces and Municipalities in the Former Moro Province

	No. of Provinces (2015)	Provinces and Years Created	Number of newly-created municipalities			
			Wave 1 (1914-45)	Wave 2 (1946-70)	Wave 3 (1971 to mid-1980s)	Wave 4 (mid-1980s to present)
Cotabato	5	South Cotabato (1966), North Cotabato, Maguindanao, Sultan Kudarat (1973), Sarangani (1992)	3	44	16	22
Lanao	2	Lanao del Norte and Lanao del Sur (1959)	1	46	11	2
Sulu	2	Sulu (1917) and Tawi-Tawi (1973);	7	13	6	3
Zamboanga	4	Zamboanga del Norte, Zamboanga del Sur (1952); Basilan from Zamboanga del Sur (1973); Zamboanga Sibugay (2001)	7	41	22	9
Bukidnon	1	Bukidnon (1917)	8	30	4	3
Agusan	2	Agusan del Norte and Agusan del Sur (1967)	3	44	16	22
Davao	5	Davao del Norte, Davao del Sur, Davao Oriental (1967), Compostela Valley (1998), Davao Occidental (2013)	1	46	11	2
Total	21		30	264	86	63

Note: Does not include the provinces of Misamis and Surigao, which were administered from Cebu until the close of the Spanish era.
 Source: WB-IOM team using data from www.govph and the Official Gazette

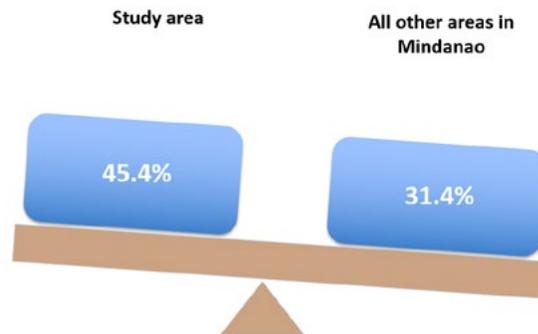
D. Conflict and the Social and Economic Impacts of Land Dispossession

90. **Land dispossession unquestionably remains a major trigger of the violent conflict and poverty that affect large parts of Mindanao.** Socio-economic welfare indicators among the Moros living in ARMM, a region dogged by persistent conflict, are the worst in the country. In the absence of comprehensive panel data, it is difficult to draw a direct correlation between dispossession, poverty and the various manifestations of conflict. However, in an agricultural economy, dispossession of land will logically result in conflict and poverty. In this section we explore the major social and economic impacts of this phenomenon.

91. According to the 2012 small area poverty estimates, 45 percent of the population in the study area lives below the poverty line, compared to 31 percent in other areas in Mindanao (refer to **Figure 2**). Further, municipalities and cities with a high incidence of land conflict are generally poorer than areas with no land conflict (refer to **Figure 3**).⁷² Within the study area, 48 percent of the population in land conflict-affected areas are poor compared to 44 percent in areas with no reported cases of land conflict. And this pattern varies across geography. In Cotabato region, 47 percent of the population in municipalities and cities with land conflict are poor, compared to 40 percent in areas without land conflict. In Lanao, 58 percent are poor

⁷² Conflict Alert System/BCMS 2011-2014.

FIGURE 2. Poverty Incidence: Study Areas vs. Mindanao



Source: Estimated from SAE 2012 and CPH 2010

FIGURE 3. Poverty Incidence: With and Without Land Conflict



Source: Estimated from SAE 2012 and CPH 2010

in land conflict-affected areas while only 52 percent are poor in areas without land conflict. In contrast, there are more poor people in areas without reported land conflict incidents (45 percent) in BASULTA than those with land conflict (42 percent).⁷³

92. People who have been displaced suffer from poor socio-economic welfare. Across a range of indicators, including food security, access to services and housing, income poverty, and exposure to violence, people who have been displaced are consistently worse off than those who have not.⁷⁴

⁷³ This can be attributed to the fact that, unlike Central Mindanao which was the prime target for resettlement programs, land in BASULTA remained mostly in the hands of their original inhabitants. Land conflict in these provinces is mostly triggered by *rido* between Moros rather than historical injustices (refer to WB-IOM 2013).

⁷⁴ See World Bank-World Food Programme (2011).

BOX 3. Poverty and Survival in the Ligawasan Marsh

Aunt Baino had been in pain for nearly a week when she asked a teenage boatman to bring her to relatives in Cotabato City, more than an hour away. The sixty-five-year-old widow, who runs a modest *sari-sari* store from the government-subsidized core shelter she'd lived in alone for the last three years, had been vomiting everything she ate. Her belly bulged. The way she gasped for breath as they steered the small pumpboat through the Rio Grande de Mindanao, the steersman, and even Baino herself, thought that she was going to die.

This is a common story in communities along the Ligawasan Marsh, and in many areas in ARMM as a whole. Patients in far-flung coastal and mountainous *barangays* are not inclined to seek medical care. Not when even basic water and sanitation facilities are scarce, and health centers are largely unmanned and unstocked. As such, trips to the nearest district or provincial facility—often several hundred pesos away—are postponed until the very last minute, so many pumpboats turn back with patients expiring midway.

Folk medicine largely fills the gap. Aunt Baino's mother was a *waliyan*, a midwife, who was also trained as a *taligamot*, a traditional healer. Between gasps, Aunt Baino recalls how her mother would stay in her patients' homes at least a month before delivery, using verses from the Qu'ran, holy words in Maguindanaon, drawing symbols on patients' bodies using turmeric and lime. Upon Aunt Baino's arrival in Cotabato, desperate relatives seek out a *taligamot*, to limited effect. It is evening when she is finally admitted to the regional hospital. The lightest touch causes unbearable pain.

A day of emergency treatment for an intestinal obstruction and pneumonia costs over PHP 15,000, a fortune for a widow supporting herself with basic buy-and-sell, crafts and odd jobs. Aunt Baino has no close family, no children. Her husband died as a *shaheed* (martyr) in the nineties, buried in a distant battlefield she had never seen. This leaves two options: to negotiate with the hospital social worker for a subsidy (usually from congressional pork barrel funds or national government programs), or to "borrow" a PhilHealth card from a neighbor of a similar profile. Aunt Baino chooses the latter.

The doctors leave Aunt Baino to recover in a room shared with three other patients, breathing oxygen through a mask she cannot afford. Once she regains strength, relatives will carry her to a pumpboat that will bring her back to the marsh. Other patients will take her place. Some survive. The cycle begins again.

Written by Ica Fernandez

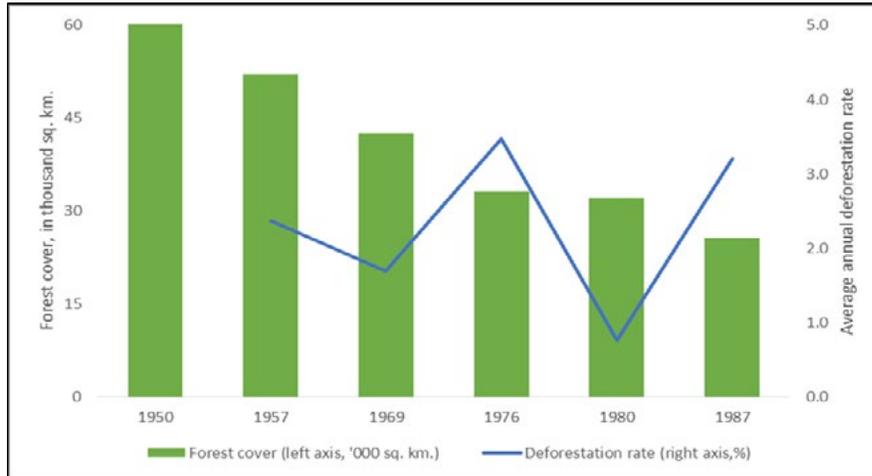
E. Environmental Impacts

93. Similarly, the absence of panel data on environmental impacts of land dispossession makes a direct correlation between land dispossession and environmental degradation inconclusive. However, environmental damage was certainly caused by the rapid clearing of land opened up through resettlement programs and the massive depletion of forest cover through large-scale logging in Mindanao in the 1950s and 1960s. These factors have made parts of Mindanao highly vulnerable to flooding and the impact of increasingly common extreme weather events.

94. David (1992) notes that half of the original forest cover in the Philippines was destroyed by 1950. Roughly

300,000 hectares of forestland was cleared per annum by the 1960s.⁷⁵ The rate of deforestation accelerated in the 1970s and 1980s. Between 1950 and 1987, forest cover in Mindanao was denuded by an average of 2.2 percent per year (refer to **Figure 4**). Only about 40 percent of Mindanao’s forest cover in 1950 remained by 1987.

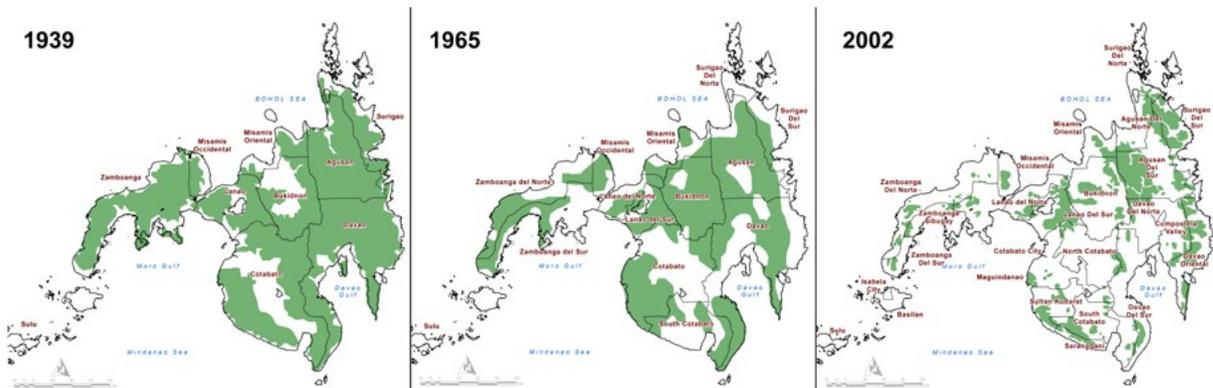
FIGURE 4. Rate of Deforestation in the Philippines



Source: Kummer (1992)

95. Consistent with Kummer’s findings, **Map 20** clearly illustrates the shrinking forest cover (i.e., the green shaded area) in Mindanao in 1939, 1969 and 2002. While Mindanao was practically a forested area in 1939, its forest cover was effectively halved by 1969. By 2002, forest areas were scattered within a limited geographic area in Lanao del Sur and Maguindanao in ARMM and in Sultan Kudarat and Sarangani (parts of the old Cotabato province). Thus, the combined impact of massive resettlement of northern migrants and the operations of large logging firms has been the systematic exploitation of Mindanao lands and natural resources. The unsustainable exploitation of these resources had denied future generations access to economic opportunity. The environmental impact has seen an increasing vulnerability to natural disaster.

MAP 20. Mindanao Forest Cover (1939-2002)



Source: Data culled from forestry and land registration records, drawn and traced on the Mindanao forest map by Evangeline McGlynn, Harvard University Graduate School of Design (2015).

75 See Poffenberger and McJean (1993) and Vitug (1993)

VI.

An Examination of
Formal and Informal
Land Conflict
Settlement Mechanisms

VI. An Examination of Formal and Informal Land Conflict Settlement Mechanisms

96. **Against the backdrop of a complex and overlapping policy and institutional framework for land management, a number of mechanisms—both state and non-state—have been established to resolve land conflict.** This section assesses how mechanisms created by the Executive government at the national and local levels, the courts (civil and *Shari'ah*) and a range of non-state justice systems attempt to address this problem.

A. Major Types of Land Dispute

97. The WB-IOM (2013) land scoping mission report defined “ordinary” land disputes as competing land claims over the same land by two or more parties that have no apparent potential to create inter-community tensions and have no serious political ramifications. Land conflicts, on the other hand, are competing land claims that could have serious repercussions for community and political stability, are beyond the capacity of local dispute resolution mechanisms and pose a challenge to existing legal frameworks.
98. The following types of land disputes noted in the 2013 WB-IOM report were further examined in this section:
- a. Titling or occupation of lands abandoned due to forced displacement of the original claimants from their lands in the late 1960s to early 1970s. This was at the height of the military aggression against Moro and IP communities. The occupants, mostly Christian settlers, were able to secure documents to “prove” their ownership or possession, while the original claimants or their successors had no supporting documentary evidence to assert their claim when they returned to their communities. Most likely, the names of the original claimants are in the allocation books of the Land Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR). This is a crucial element in the titling procedure for public lands that have been declared as alienable and disposable.

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- b. Land acquisition through involuntary sale or sale under duress. This form of forced displacement saw original claimants or titleholders compelled to sell their land well below market value. Years later, citing an unfair transaction, heirs reclaim the land despite lacking supporting documents. This is also one method through which some local political and business elites consolidate small lots into vast land areas for plantation ventures. The small landholdings are either privately owned but untitled or are covered by Certificate of Land Ownership Awards (CLOAs) issued under the agrarian reform program.
 - c. Land acquisition through fraudulent alteration of original lease agreements. In these cases, titleholders or claimants, usually poorly educated, are tricked into signing a deed of sale which they are made to believe is a lease agreement. They or their heirs seek to reclaim the land, but the “lessee” may well have their own legal documents. In some cases, tracing ownership is complicated by the fact that the land might have been sold several times over.
 - d. Physical occupation of the land, with the hope of achieving tenurial security in the future, at the very least as an Agrarian Reform Beneficiary (ARB). The owner or claimant comes back, but the occupants argue that their years of occupancy prove their right to ownership. The policy of giving priority to actual tillers during the CARP process has, at times, disregarded the rights of original occupants (Gutierrez and Borras, 2004). It also increases motivation to occupy lands with prior claims.
 - e. Manipulation of land policies meant to address inequality of land ownership. One such example took place in a town in Maguindanao. A Voluntary Offer to Sell (VOS) transaction by a big corporation was accepted and the Department of Agrarian Reform (DAR) started the identification of ARBs from among the actual occupants. However, a local elite managed to buy off some of the occupants and deployed his own people to be listed as dummy ARBs, so he could keep the property intact for plantation purposes. There are more such cases in Maguindanao, resulting in the suspension of VOS transactions or cancellation of CARP coverage.⁷⁶
 - f. Multiple claims due to the issuance of different tenurial instruments on the same property by various land administration and management (LAM) agencies of the government. In sitio Bahar in South Upi, Maguindanao, Tedurays stand on their claim on the land on the basis of a proclamation from the defunct office of the Presidential Assistant for National Minorities. Moro settlers counter saying they are the original claimants, referring to a DENR Public Land Survey in the area.
99. Other land-related disputes that are outside the historical conflict box but have led to violent conflicts, include the following:
- a. **Private land boundary disputes.** This is the most common type of disagreement over land and is usually caused by willful intent or a simple lack of information on property boundaries.
 - b. **Disputes on the rights of succession.** Failure to leave a will that clearly stipulates the distribution of land can potentially spark clan *rido*, involving both the children and grandchildren of the deceased.

⁷⁶ Interview with Hadja Cabayan Bacar (PARO Maguindanao), 9 September 2015.

100. Left unresolved, these disputes have led to the destruction of property and loss of life. The intersection of horizontal and vertical conflict in Mindanao can see communal disputes erupt into conflict between government forces and non-state armed groups. Lara and Chapmain (2009) assert that the imposition of ineffective land reform programs and the persistence of land resource-based conflicts create that critical intersection between rebellion-related violence and violence within and among clans.

B. Processes Used and Accessibility of Existing Dispute Resolution Institutions and Mechanisms

101. Land conflicts are settled through a range of state and non-state institutions, including some hybrid mechanisms that combine the authority of the state and the legitimacy of community-based norms. The key institutions operating in Mindanao are described briefly below.

102. **Executive government institutions.** The Department of Agrarian Reform (DAR) and the Land Management Bureau (LMB) and Forest Management Bureau (FMB) of DENR have quasi-judicial powers to settle competing land claims. The LMB, for instance, can determine legal ownership of lands covered by an Original Certificate of Title. It can also facilitate settlement of competing claims without resort to the courts. The complainants are usually heirs of original claimants whose land ownership has been transferred to other holders. Although it has no power to adjudicate, the Register of Deeds can authenticate the transfer of Certificates of Title and is, thus, viewed as a key element in dispute resolution.

103. The DAR Adjudication Board (DARAB) has quasi-judicial powers to settle disputes over the tenurial status or titles of agricultural lands. These issues are usually first subjected to amicable settlement in this forum. However, DAR-ARMM does not enjoy these powers, so complainants must travel to the DARAB offices in neighboring regions.⁷⁷

104. **In IP communities, where land is considered sacred, disputes often arise from threats by parties outside their group or when claims to ancestral lands are contested.** In such cases, the National Commission on Indigenous Peoples (NCIP) can take legal action on fraudulent land claims or settle competing claims for ancestral domain. In ARMM, however, IPs are not able to benefit from this service, as the NCIP has not established an office in the region. In ARMM, the Office of the Southern Cultural Communities (OSCC) works with other organizations through its Conflict Management and Resolution initiatives but as the jurisdictional contestation between NCIP and OSCC is still ongoing, there is no guarantee that the provisions in IPRA on conflicts involving ancestral domain or lands will be respected, in the absence of the powers of IPRA in ARMM.⁷⁸ NCIP has reportedly not responded to representations by ARMM to devolve such powers to ARMM but in 2014, it started the self-delineation of ancestral lands without involving the OSCC.

⁷⁷ By virtue of Executive Order 482 of 1991 (section 2), 'The adjudicatory functions of the Department of Agrarian Reform shall be retained by the Department until a Regional Agrarian Reform Law has been enacted by the Regional Assembly.' No such Regional Agrarian Reform Law has been passed in ARMM.

⁷⁸ Interview with Froilyn Mendoza (BTC), 11 September 2015.

105. **ARMM also created the Regional Reconciliation and Unification Commission (RRUC) in 1993 as an advisory and conflict management body.** The RRUC directly engages in settling local conflicts, focusing on on high-profile cases and *rido* with the potential to escalate into vertical conflict.⁷⁹
106. **Authenticated copies of land titles and lot records are crucial to settlement proceedings in government agencies and these documents are deemed incontestable.** Arbitration is resorted to in settling ownership issues, in which parties with fake titles are reprimanded. The arbiter shifts to mediation when there is potential for amicable settlement on access to and use of the land.⁸⁰ Resolutions that involve subdividing the land between the legal owner and other claimants will have to be reflected in the titles. If so, the LAM agencies will have to assist the parties in perfecting the title to reflect the new arrangement.
107. **State justice system.** Three bodies in the state justice system deal with land disputes: a) the Barangay Justice System (BJS); b) Civil Courts; and c) *Shari'a* courts. Established pursuant to Republic Act 7160 or the Local Government Code of 1991, the BJS is a compulsory mediation process that operates at the village level.⁸¹ A community council appointed by the village head, called the *Lupong Tagapamaya (Lupon)*, seeks to mediate civil and minor criminal cases at the community level. A minimal fee is collected. While the system is accessible and generally functions well, its application to land disputes is limited under RA 7160. The *Lupon* cannot hear cases related to land in different municipalities or with parties from different municipalities, unless the *barangays* are adjoining. Cases involving the government are also excluded. Furthermore, as reported by the the ARMM Department of Interior and Local Government (DILG), the Barangay Justice System does not function effectively in the region. DILG-ARMM has no documentation of land dispute settlements by the *Lupon*.
108. Should the conciliation proceedings fail at the *barangay* level, disputes are endorsed to the Civil Court System, which exercises the broadest jurisdiction over land disputes. Docket fees for cases involving real property are based on its assessed value. Alternative dispute resolution via mediation or arbitration is also available in the courts, prior to litigation. This is a popular option, as the average time taken to resolve a case through to the Supreme Court is nine years. Legal aid is very limited, especially for civil cases. Effectively, therefore, the courts are not a feasible option for the poor.
109. Created by virtue of Presidential Decree No. 1083 of 1978, *Shari'a* Courts are restricted to personal law cases involving Muslims.⁸² Their core business is settling divorce and succession cases for Muslims. The courts' jurisdiction over land disputes, therefore, is limited to succession rights and the division of property in divorce proceedings. The *Shari'a* court system strongly encourages amicable settlement through an *Agama* Arbitration Council, which is constituted by representatives chosen by each side and chaired by the Clerk of Court. Even if a case reached the litigation stage, the judge will usually attempt to convince the parties to settle amicably, invoking Islamic teachings and the tradition of kinship. Usually, this leads to softening of the positions of the disputants, resulting in the speedy disposition of the case⁸³ While generally well-received by litigants, the

79 Interview with Ismael Maulana (RRUC-ARMM), 18 August 2015.

80 Interviews with Atty. Badrudin Pacasem (LMB), 24 August 2015; and Danny Muyco (CENRO), 16 September 2015.

81 For more on the Barangay Justice System, see Stephens (2003) "Local-level Dispute Resolution in Post-Reformasi Indonesia: Lessons from the Philippines." 5(3) *Australian Journal of Asian Law* 213

82 However, the *Shari'a* court can hear a case involving a Christian and a Muslim should both parties agree.

83 Interview with *Shari'a* Judge Datukaka Camsa, 7 September 2015. For a brief discussion on the operation of the *Shari'a* courts and Islamic law in the Philippines, see Stephens (2011) "Islamic Law in the Philippines: Between Appeasement and Neglect." *Islam, Syari'ah and Governance Background Paper*

Shari'a courts suffer from many of the same shortcomings of the civil court system. Courts are located in towns and cities, far from the community level. Court proceedings take place in English or Arabic, both of which are foreign to most people. And chronic under-funding means that many of the circuit courts do not function at all. Those that do often lack judges and have no funding for legal aid or community legal education.

110. Formal courts require the presentation of authenticated copies of tenurial instruments to ascertain legal ownership or possession. They are viewed as the venue of last resort. The adversarial nature of litigation, the slow and costly nature of the process, the technical complexity and the use of a foreign language all discourage disputants from using this forum. Despite the availability of court-annexed alternative dispute procedures, most people still prefer to go to other resolution mechanisms.
111. **Local government conflict resolution bodies.** In light of the shortcomings of the courts and national government quasi-judicial bodies, a number of Local Government Units (LGUs) have established *ad hoc* mechanisms to resolve local conflicts. Local governments do not have a legal mandate under the Local Government Code to resolve legal disputes, but these bodies are inspired by the spirit of decentralization of the Code. Local government bodies are created through an Executive Order and/or local council resolution and are, thus, coterminous with the term of the local chief executive.
112. These mechanisms tend to respect local government protocol, only assuming jurisdiction over cases referred by the *Lupon*. From then on, the process is similar to customary justice systems, emphasizing restoration of harmony over the achievement of purely legal solutions.
113. The distinct feature of these mechanisms is their ability to marry community norms with the authority of the State. The LGU mechanisms are created in the tradition of customary justice practices, while acting under the mandate of the modern day *datu*, the elected politician. Being *ad hoc* provides more flexibility, as they are not subject to rules governing regular government offices.
114. Unlike community-based mechanisms, they can bring in agencies of government where necessary. For instance, DENR might be requested to conduct a relocation survey; the Assessor's Office to confirm names in the tax declaration of disputed property; and the Register of Deeds to authenticate titles, etc. When armed conflict intensifies, they can also more easily bring in the security forces or national agencies, such as the Office of the Presidential Adviser on the Peace Process (OPAPP), to assist.
115. Local government mechanisms vary in form and function depending on context. For instance, the Mayor's Council of Upi in Maguindanao is tri-people in character, reflecting the population composition of the town. The Council comprises two members each from the Moro, IP and Christian communities. If the disputants are Moros, the Moro members of the Council will co-chair the settlement sessions which will be framed by Islamic and/or customary laws. The same practice is followed with other groups. Several land disputes, mostly on boundary conflicts and inheritance claims have been settled through this forum. The NaTuLaRaN Mu Peace Council in Midsayap, North Cotabato (refer to **Box 4**) is an alliance of six *barangays* formed to resolve *rido* and land conflicts in the area.⁸⁴ One of the *barangay* chairpersons sits as the Council chair. The Council takes only those disputes endorsed by the *barangay* officials.

Series, Centre for Islamic Law and Society, University of Melbourne.

84 NaTuLaRaN Mu stands for Nabalawag, Tugal, Lower Glad, Rangaban, Nes and Mudseng, all *barangays* in Midsayap.

BOX 4. The NaTuLaRan Mu Peace Council

An alliance of six adjacent *barangays* in Midsayap, North Cotabato, this Council was created in 2006 through the representation of a local CSO, Integral Development Services, Philippines Inc. It is supported by an Executive Order and resolution from the *Sangguniang Bayan*.

Midsayap was a Muslim area until 1927, when settlers started arriving. In time the social dynamics of the town changed and conflict over land ensued between settlers and original inhabitants.

Formation of the Council was triggered by violent displacement in four of the six *barangays* due to land conflict. The idea was to harness the combined energies of the leadership of the six *barangays* to settle such land disputes and resolve clan feuds. The Council only takes jurisdiction over a conflict on referral from the *Lupon*.

The Council not only resolves disputes but takes action such as submitting resolutions to the Municipal Mayor and the Council to maintain stability, such as requesting the installation of military detachments. It also agrees on security policies (e.g., curfew hours in all six *barangays*).

One dispute settled by the Council involved 19 Agrarian Reform Beneficiaries (ARBs) who had been issued Certificates of Land Transfer (CLT) and 40 occupants of a 24-hectare plot of land. A series of dialogues between the ARBs and the occupants led to a resolution to the Municipal Agrarian Reform Officer and the DENR to conduct mapping and a relocation survey. While the MARO and the DENR performed their tasks, the Council monitored the security situation and addressed any potential conflict triggers. The survey helped to resolve the issue.

When land disputes intensified in several *barangays* in 2007, around 6,000 people were displaced. In response, the Council brought in the GPH-MILF ceasefire monitoring mechanisms and government agencies, including then-Presidential Adviser on the Peace Process, Secretary Jesus Dureza. Inter-agency meetings involving the Council, Midsayap LGU, national government agencies, security forces and CSOs were convened to respond to the land issues, which had escalated into vertical conflicts between government troops and non-state armed groups.

116. The state institutions have the advantage of being able to validate legal claims to land.⁸⁵ Crucially, they can also effectively convene all stakeholders around a particular dispute. However, the LGU bodies are sometimes seen as inaccessible, with complicated procedures. More significantly, the resolution of high-profile cases often requires the concurrence of the local government chief executive. Presence of the Mayor or Governor can assist the sustainability of settlements. But it can also be a hindrance where disputants are either political allies or opponents. In a region where local chief executives are sometimes implicated in land-grabbing, the capacity of the LGUs to manage land conflict will vary widely from location to location.

117. **Non-state justice systems.** A range of non-state justice bodies exist to settle land issues at the community level, including: a) customary dispute settlement systems, which are primarily found in Moro and IP communities; b) civil society-managed dispute settlement processes; and c) the MILF's *Shari'a* courts.

118. The LGU mechanisms described above reflect key elements of customary dispute settlement systems. Persons of influence and authority, such as the *datu*, either initiate the resolution process (particularly if the parties are from their clan) or are asked to intervene by the aggrieved party or concerned individuals. They

85 Interview with Abdunasser Malingco, 2 September 2015.

tend to be eminent persons in the community who are familiar with Islamic laws (for Moro communities) or customary laws/norms (in both Moro and IP communities). They form a Council of Elders or a Tribal Council. In some Maranao communities, for instance, processes are guided by the substantive and procedural laws embodied in the customary set of laws called *taritib ago igma*. If the disputants belong to powerful clans, the mediators must have a source of power higher than them. Negotiations do not immediately focus on the land dispute. Instead, they will begin by creating an environment for dialogue to take place to put an end to the killings.

119. If the parties still display animosity toward each other, the council resorts to shuttle negotiations. They guide the disputants to explore the issues from their own perspectives and in negotiating the settlement. As arbiters, they have a wide latitude to decide on remedies so long as they do not exceed the limitations of the Qur'an or customary law.⁸⁶ More than tenurial instruments, oral history has a higher value in these systems.
120. The sense of “being among equals” is observed in some IP settlement proceedings. In the *Teduray Tiyawan* (settlement) process, for example, participants are placed in a circle and there is no hierarchical seating arrangement. The justice system of some other IP groups is quite formal, however, with codified laws and a structured appeals process up to the *Fagildan* (Tribal Appellate Court).⁸⁷
121. Where killings are involved, the payment of blood money is common practice, as a means of redemption and to “cleanse the heart” of the perpetrator. Paying blood money is key to ending vengeance killings and restoring relations. At present in Maguindanao the amount per slain person is approximately Php 120,000 but this can vary, depending on the capacity of the offender to pay, the number of deaths and the reaction of the aggrieved party. In some cases, the matter of blood money is part of the resolution. In others, it is set by the relatives of the victim as a condition of entry into any settlement process. If the offender is not able to raise the entire amount, the negotiators will request the local government to pay the balance.⁸⁸
122. If an agreement is reached, the terms of the settlement are written and signed in the presence of witnesses. Where possible, rituals such as *kanduli* (or *kanduri*) are held in Moro areas to both celebrate the peaceful resolution and inform the community. The parties also swear on the Holy Qur'an, as a demonstration of their commitment to implement the agreement (Torres, 2007). Rituals of cleansing and reconciliation are also common in most tribal settlements.
123. **Building on customary processes, in recent times a number of civil society organizations (CSOs) have supported local level dispute resolution.**⁸⁹ While adopting the traditional ways, they also bring in sophisticated negotiation strategies and enjoy some financial support. CSO-led initiatives tend to prioritize cases with a history of or high risk of violence, often involving prominent families.
124. According to Samsodin Amella of Mindanao Actions for Peace and Development Initiatives (MAPAD), settling land disputes is the same as settling other sources of discord—it must start with mending broken

86 Interview with Abdunasser Malingco, 2 September 2015.

87 Interview with Froilyn Mendoza, 11 September 2015.

88 Interview with Yamashita Mangacop, 21 August 2015.

89 Among the more prominent CSOs are the Mindanao Actions for Peace and Development Initiatives, Inc. (MAPAD) and United Youth for Peace and Development (UNYPAD).

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relationships by opening up space for dialogue (refer to **Box 5**). The edge that this type of facilitated process has is the relative neutrality of the CSOs and the use of sophisticated negotiation strategies. Support for logistical costs to shuttle between parties based in different locations also helps.⁹⁰

125. In the CSO mechanisms, conflicts are viewed as transcending relations between individuals—they affect community life as well. Historical narratives about the land claims carry great weight as a means of defining land use arrangements that benefit all parties concerned. Thus, the objective that guides the entire process of settlement is re-establishing harmony and unity in the kinship and in the community. The indicator of a successful resolution is the reintegration of disputants in the community. Focusing on reconciliation and harmony, measures that have healing effects such as pacification and purification are prioritized (Wehrmann 2008). Written agreements bind the parties to the agreed solution, though the enforceability and sustainability of such settlements is questionable, particularly where there is a power imbalance between disputants.

BOX 5. Selected CSO-managed Land Dispute Settlement Mechanisms

UNYPAD Executive Director Anwar Saluwang described the process in CSO-managed settlement as follows. They field a Quick Response Team to clear the ground for negotiations between the two parties from clan leaders. Once convinced, these leaders get other influential leaders of their respective clans on board and select the person to mediate between them. Shuttle negotiations lead to an exchange of positions on the dispute before the parties face each other. Teams of five leaders are formed on each side to discuss the rules of the negotiations, frame the issues and to represent each side in the negotiations.

The core team on each side is then expanded to fifteen, in order to gather more opinions on the resolution, achieve broader consensus, draft the agreement and plan for the ritual of signing and celebration. This ritual is witnessed not just by the community but also by officials from the local government, security forces, civil society and ceasefire mechanisms under the peace negotiations.

Catholic Relief Services (CRS) “Binding, Bonding, Bridging” (A3B) project.⁹¹ CRS and its local partners ran the A3B program from 2012-2015. The program sought to strengthen local capacities for peace in three areas: a) traditional and religious leaders (TRL) as entry points for capacity building; b) enhanced capacities of the *Lupon* to facilitate community dialogues to resolve land conflict; and c) engage the municipal government for policy support.

In each community, CRS applied the 3Bs. “Binding” is the first step, where individuals go through a process of trauma healing and self-transformation; “bonding” builds mutual understanding and acceptance within ethnic/religious groups; and “bridging” is when a group interacts with other groups for community-wide activities such as joint assessments for specific land issues.

An additional element is legal literacy, to increase the knowledge of TRLs on the land policy framework and requirements to obtain legal instruments for security of tenure. Legal literacy builds the confidence of mediators and provides disputants with a broader set of options on settlement norms and institutions, be they customary, Islamic or state.

In addition to directly resolving a number of cases, CRS reported the following successes—fewer land cases were brought to the courts, community members and local government officials had a better understanding of their rights and responsibilities, the role of the TRLs in conflict resolution was formally recognized, and participating municipal governments issued an Executive Order directing the municipal inter-agency working group formed in each town to conduct an inventory of land conflicts, recommend how they will be resolved and to coordinate settlement of land conflicts in their respective areas.

⁹⁰ Interview with Anwar Saluwang, 14 August 2015.

⁹¹ See Catholic Relief Services (2015) *Binding, Bonding, Bridging: Applying the 3B's to Land Conflict in Mindanao*. Final Report (April 2012-September 2015).

126. **MILF justice system.** The MILF has established a shadow *Shari'a* Court system. Unlike the government system, which only covers personal laws, the MILF courts cover civil, commercial and criminal cases. The MILF court system comprises a Supreme Court, three Courts of Appeal and 42 “Provincial” Trial Courts.⁹² Docket fees of PhP 1,500 are charged to cover operational costs. While not limited to MILF members, in reality disputants are MILF members or supporters. Amicable settlement processes are exhausted before litigation commences, even if the case has been filed with the court. The *sulk* or the arbitration council chaired by the Clerk of Court is convened for that purpose, with members selected by the disputants. All agreements and decisions are written and copies are sent to all concerned, including the MILF’s peacekeeping unit, which is tasked with enforcing decisions. In sensitive, high profile land cases, such as the disposition of landholdings of a political warlord, the Supreme Court forms an *ad hoc* committee, composed of MILF members who are well versed in Islamic law.⁹³
127. For land disputes—which make up the largest number of cases in the MILF courts—the presentation of authenticated titles and records is also crucial. If a relocation survey is required to resolve ownership issues or is included in the amicable settlement or court decision, the parties will be asked to implement this. In some instances, the MILF will field its own engineers to conduct the survey. The MILF Court will encourage the parties to apply for land titles or whatever is required by state law to reflect the resolutions reached in the settlement or the decision of the Court.
128. MILF *Shari'a* court judges report similar challenges to those faced by their civil court equivalents—limited logistical support and difficulties executing decisions against powerful interests.
129. **Conclusion.** Non-state mechanisms are more accessible to the community, generally do not impose fees, are more transparent, have a shorter timeline in resolving conflicts and use local dialects. Although non-state in nature, some are quite formal, with codified laws and formal procedures. Some also draw on state law, such as using government-issued titles to establish legal claims.
130. CSOs have lent sophistication to local mediation processes, with the objective of increasing participation, transparency and integrity, while ensuring secrecy in the negotiation, when necessary. In these mechanisms, the main imperative is the restoration of harmony and prevention of violence. While understandable in what can be very volatile situations, the harmony imperative can be used at times to suppress legitimate claims of the weak. As Merry (1993) observed, customary justice ‘tends to reinforce and entrench relations of power rather than transform them.’⁹⁴
131. Agreements are ostensibly binding on the parties. However, the sustainability of resolution outcomes is questionable, given the following considerations: a) not all parties with legitimate claims to the land might be involved in the resolution process. Bacaron (2010) mentions that years after some resolutions have been reached, feuds occur between excluded members, including those not yet born at the time of the resolution; b) some landowners might feel they are unable to fully assert their rights, in the name of keeping the peace; and c) some resolutions seem to encourage illegal occupation of land owned by others.

92 The MILF has its own definition of a province, which is not consistent with Philippine government administrative boundaries. It is closer to a municipality in the government system.

93 Interview with Abdulsalam Alabat, 4 September 2015.

94 Merry (1993), “Sorting Out Popular Justice,” in Sally Engle Merry & Neal Milner (eds) (1993) *The Possibility of Popular Justice*, Ann Arbor, Michigan: University of Michigan Press.

C. Summary and Recommendations

132. Multiple institutions and mechanisms have been created by the state, communities and civil society to resolve land disputes. While many have achieved some success, the legacy of historical injustice and the ongoing prevalence of land conflict demonstrates that major gaps remain in the dispute resolution system.
133. State mechanisms carry the authority of the government, including its mandate to determine land ownership. However, state mechanisms tend to be difficult to access, expensive and time-consuming. With respect to the courts, the confrontational nature of litigation contradicts the social preference for and imperative to preserve harmony. Crucially, the state is also seen by many as a cause of conflict. Government imposed discriminatory policies against Moros and IPs. And government created the confusion of land-related policies, laws and institutions that complicates the situation on the ground. Thus, the state has many advantages, but equally suffers from a deficit of trust and capacity.
134. Local government bodies show promise in blending traditional practices with state norms in a form of hybrid justice. The *ad hoc* nature of the LGU systems, however, compromises their sustainability. But more importantly, local government mechanisms depend on local chief executives, some of whom are either direct protagonists in land disputes themselves or prone to making decisions based on political considerations.
135. Non-state systems enjoy local legitimacy as symbols of cultural identity. They are low-cost and highly accessible. But addressing local power imbalances is a serious challenge. The emphasis on keeping the peace can tend to prioritize short-term harmony over long-term resolution of issues. The MILF shadow Shar'iah court is an interesting venue but its confinement to Islamic law limits its reach to Moros and to non-Moros who willingly submit their dispute to this court.
136. CSO initiatives can be effective and can both solve problems and prevent them from turning violent. They offer valuable experiences on the elements of a successful resolution. Sustainability of resolutions and the ability to scale up initiatives that succeed because of intensive and targeted facilitation and attention is a perennial dilemma when looking for wide-ranging and practical solutions to land issues.

D. Elements of Successful Resolution

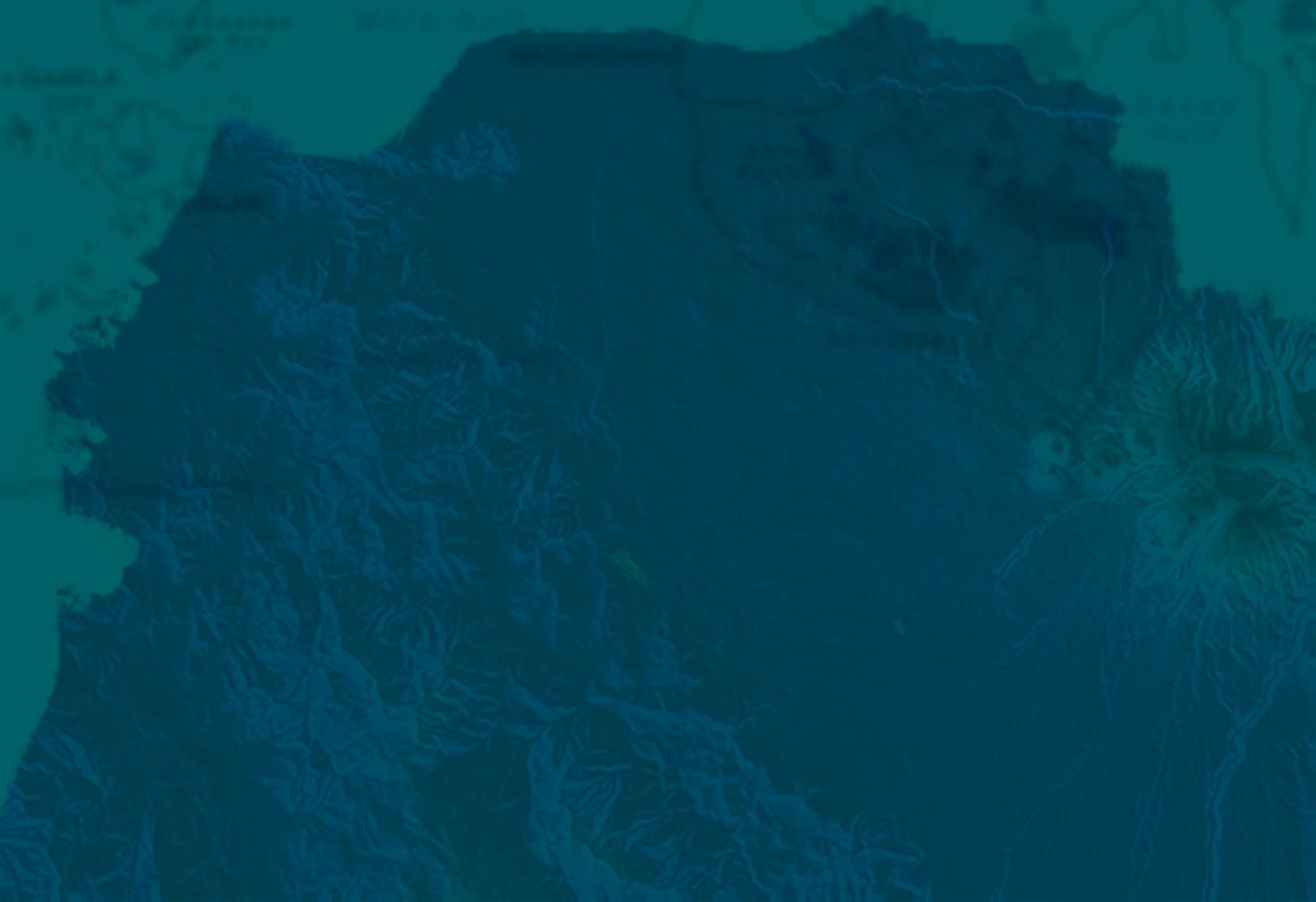
137. While all the mechanisms described in this section have strengths and weaknesses, the examples assessed and information gathered for this report demonstrate three key features of successful resolution of land disputes: a) the importance of convening all relevant parties to a claim—competing claimants, relevant national and local government agencies, the security sector, community and religious leaders and civil society. This brings all potential issues to the surface while also bringing to bear the technical capacity and authority of the state, the moral legitimacy of community leaders and the relative independence of civil society; b) the need to painstakingly resolve competing claims plot-by-plot, claim-by-claim. The story of each dispute can be complex and diverse. Wholesale solutions are neither legally nor socially feasible; and c) the need to ground

dispute resolution in healing and reconciliation to encourage acknowledgement of the historical injustices and arrive at a shared realization as a community with a collective history of trauma. Resolving land disputes needs to have an understanding of the psychological fears it can provoke (Wehrman 2008). Finally, legal literacy can also play an important role in ensuring that community members are aware of their rights and the rights of others.

138. A key observation in the interviews is that there is a growing recognition that government-issued titles definitively establish legal claims and, while it cannot totally prevent them, can also discourage competing claims. A legal title is the only credible, incontrovertible proof of ownership.
139. When a process involves land-titling agencies, it clearly sends the message that the issue is being settled with the authority of the law through documents that are regarded as absolute and incontestable. This idea goes against the historical claim of communal ownership but it is perhaps inevitable that in the contemporary context, the law sets the legal parameters to frame disputing land claims. The NaTuLaRaN Mu Peace Council demonstrated that land titling through *barangay*-wide systematic adjudication by DENR with DAR is possible. These agencies had important roles in the solution by formalizing agreements on ownership claims or settling contesting claims. This was an example of a state-community partnership at the local level to arrive at a sustainable solution (Adam, Verbrugge and Boer, 2014).
140. For titling to provide a just and sustainable solution, however, it needs to incorporate the elements of success described above, lest it simply continue to be a tool of dispossession that legitimizes injustice. The lack of such an accompanying process is one reason why titling is widely resisted in ARMM.
141. CRS's A3B project demonstrates what these community processes look like in operational terms. The "Binding" phase provides a solid basis for healing and reconciliation. The legal literacy component provides the technical tools to determine solutions for each land issue. And the process brings together conflicting parties and all the relevant technical agencies to identify and then implement locally-driven solutions.

VII.

Prospective Challenges



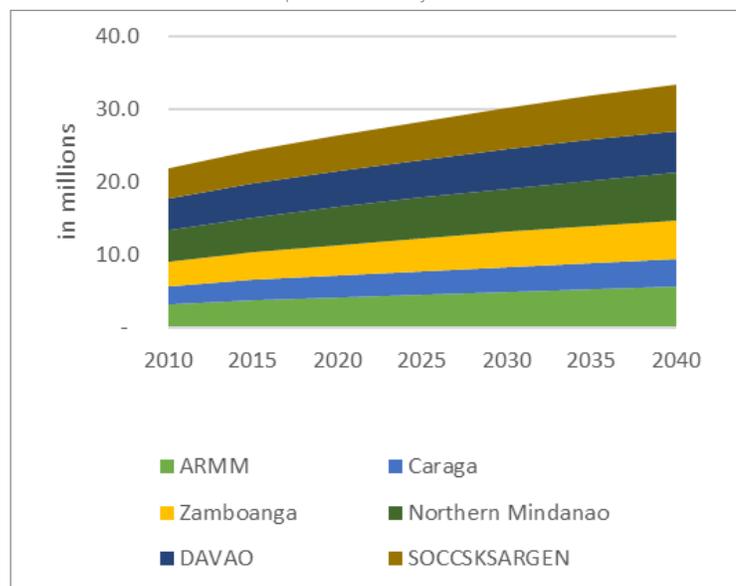
VII. Prospective Challenges

142. The Comprehensive Agreement on the Bangsamoro seeks to recognize and deal with issues of the past while laying the foundation for a more peaceful and prosperous Bangsamoro. Against that context, implementing the necessary policy and institutional reform measures stipulated in the CAB and under the mandate of the TJRC to address land dispossession will face numerous challenges at different levels. These are discussed below as background to the recommendations that follow in **Section VIII**.

A. Projected Population Growth in Mindanao and ARMM

143. Based on the 2010 census, Mindanao's population is 22 million. Mindanao has a total land area of around 10 million hectares, a third of the Philippine territory. Around 60 percent of Mindanao's land is classified as mountainous and forest areas, meaning that only 40 percent is fit for settlement (refer to **Map 21**). This means that 22 million residents live in this limited land area of 4 million hectares, plus areas that are legally classified as forest but which have actually been settled and converted into agro-forestry. So, the island is densely populated and land is scarce. As described in previous sections, increasing land scarcity through the 1960s and 1970s was one trigger of widespread violence. This problem will grow as the population continues to increase.

FIGURE 5. Population Projection for Mindanao

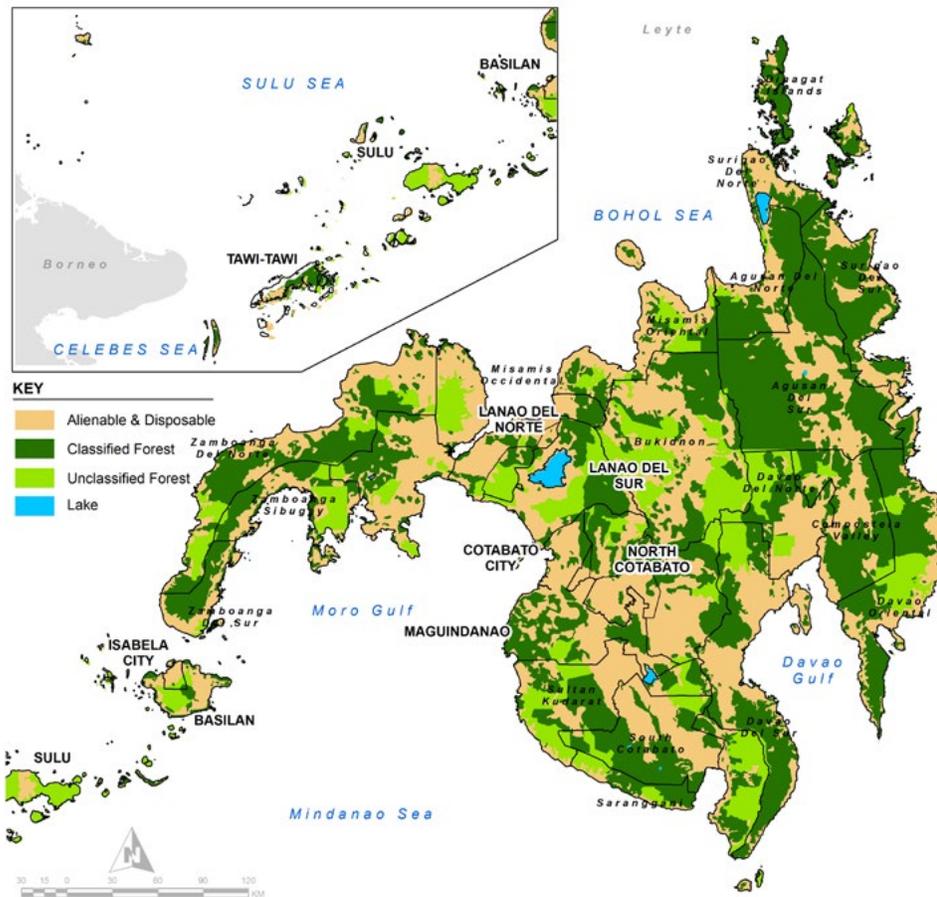


Source: Estimates based on official population projections of PSA.

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144. Mindanao's population is expected to grow by an average of 1.3 percent per annum. At that rate, the projected population is 33 million by 2040. It is worrying to note that the projected population growth over the next 25 years is strongest in ARMM at 1.5 percent. This translates into an additional 1.7 million people in ARMM and nine million more people in all of Mindanao by 2040. Without proper land use planning and management and efforts to increase agricultural productivity, initiatives to address land dispossession could offer only a temporary reprieve from the problem.

MAP 21. Land Classification (2008)



Source: JICA SERD-CAAM (2008) using NAMRIA data

B. Land Administration and Management Implications of the CAB and BBL

145. In the Comprehensive Agreement on the Bangsamoro (CAB) and the original version of the proposed Bangsamoro Basic Law (BTC-crafted BBL: House Bill 4994 and Senate Bill 2408), the government and Bangsamoro representatives categorize 81 powers as either reserved for the central government, exclusive to the Bangsamoro or concurrent with/shared by the two sides. Of these, 58 would be exclusive to the Bangsamoro, nine are reserved to the central government, and 14 are shared. The draft Bangsamoro Basic

Law would maintain the *Shari'a* Court system⁹⁵ and create Tribal Courts.⁹⁶ The regular courts would be retained, exercising jurisdiction over cases not covered by either the *Shari'a* or Tribal courts.

146. No new concepts of land ownership are introduced under the draft BBL. Thus, land ownership within the Bangsamoro territory will be comprised, like the rest of the country, of the lands of the public domain and lands of the private domain. Private lands within the Bangsamoro Territory are to be respected.⁹⁷ However, the legitimate grievances of the Bangsamoro people arising from any unjust disposition of territorial and proprietary rights, customary land tenure or their marginalization are to be acknowledged and, if possible, restored. The Bangsamoro, together with the Central Government, will address this issue of restoration or reparation.
147. **Public Domain Land.** The proposed law would transfer to the Bangsamoro Government the power of the State to administer and manage lands of the public domain, including the right to dispose public agricultural lands,⁹⁸ to manage forest and mineral lands, and to maintain/conservate national parks.⁹⁹ The power to classify lands of the public domain as agricultural, forest, mineral or national parks was reserved to the President; however, such classification shall only be made when initiated or recommended by the Bangsamoro Government.¹⁰⁰ Lands that are presently classified as alienable and disposable agricultural lands and those that will be classified by the President later will be disposed by the Bangsamoro Government under a public land granting arrangement defined by the Bangsamoro Parliament.
148. The Bangsamoro Government, however, would acquire the power to determine the sub-classification of inalienable lands. Thus, the draft BBL provides that the Bangsamoro Government would have the power to declare nature reserves and aquatic parks, forest, watershed reservations and other protected areas in the Bangsamoro, amending for this purpose the following laws, among others:
- a. RA No 7586 NIPAS 1992 as amended by RA No. 10629
 - b. PD No. 705
 - c. PD No. 1515 Vesting Jurisdiction and Control over Watershed reservations in the Ministry of Energy and for other Purposes
 - d. PD No. 87, Amending PD No. 8 (An Act to Promote the Discovery and Production of Indigenous Petroleum and Appropriate Funds thereof); and Republic Act No. 7942, The Philippine Mining Act of 1995

95 Article X, Bangsamoro Justice System. This maintains the existing *Shari'a* courts. The draft BBL offers the potential to expand the jurisdiction to cover criminal and commercial cases, but this power is also present in the existing Expanded ARMM Organic Act or RA9054.

96 Article X, Bangsamoro Justice System, Section 24. Office for Traditional/Tribal Justice System. "There is hereby created an Office for Tribal Justice responsible in overseeing the study, preservation and development of tribal justice system within the Bangsamoro. The powers and functions of the Office shall be defined by the Bangsamoro Parliament. The Office shall ensure the full participation of indigenous peoples in the formulation, implementation and evaluation of policies related to the strengthening of tribal justice system; ensuring further that such systems maintain their indigenous character in accordance with the respective practices of each tribe."

97 Article IX, Section 3 of the Bangsamoro Basic Law.

98 Article V, Section 3. Exclusive Power. (31) Land management, land distribution and agricultural land use classification.

99 Article V, Section 3. Exclusive Power. (34) Environment, parks, forest management, wildlife, nature reserves and conservation

100 Article V, Exclusive Powers, Section 31. Land management, land distribution, and agricultural land use reclassification. - The classification of public lands into alienable and disposable lands shall be initiated and recommended by the Bangsamoro Government to the President for timely implementation of Bangsamoro development plans and targets;

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149. Thus, the Bangsamoro Government would have the authority to conduct cadastral surveys, lot surveys and isolated and special surveys in the Bangsamoro. The Bangsamoro Government would be required to furnish the results of these surveys to, and coordinate with, relevant Central Government agencies to effect inclusion into the national cadastre.¹⁰¹
150. **Potential issue.** This provision is only a transfer of function from the central to the Bangsamoro government. This presents no potential problem, provided that such power is exercised within the limits stipulated by the Constitution, especially on the qualification of the applicants and the area limit of the concession or disposition. However, the technical standards with regard to land survey, procedures and processes should be the same for both governments to avoid overlaps, gaps and other survey errors that may cause unnecessary conflicts on the ground. This will require significant, long-term capacity-building.
151. **Private domain lands and vested rights.** Vested private rights to lands within the Bangsamoro Territory will be respected.¹⁰² It is generally accepted that the right to land is vested when such right has become the property of a particular person or persons as a present interest. This right confers the privilege to enjoy property legally vested, to enforce contracts, and enjoy the rights to property conferred by existing law or some rights in property which has become fixed and established and no longer open to doubt or controversy.¹⁰³
152. Interpreting this under present laws and jurisprudence, the Bangsamoro government would recognize rights over lands covered by existing Torrens titles issued by the Central government and the informal rights of present/current occupants of alienable and disposable lands to apply for a public land grant if so qualified or to have their unregistered titles or private rights confirmed by court.
153. **Potential issue.** The determination of informal or undocumented rights to land can be challenging. The process of adjudicating informal rights is subject to a lot of nuances, both technical (land boundaries/surveys) and legal (proof of claims). If not properly addressed, this may result in fraudulent claims and possible conflicts with dispossessed legitimate claimants. In addition, there is a legacy of the past that will require action, (i.e., vested private rights that are vested in appearance only, such as when titles or deeds were obtained illegally, through corruption or collusion). Also this will involve sensitive, complex issues that will require careful handling in light of its conflict potential.
154. **Land Registration.** Land registration is listed as a concurrent power of the Bangsamoro and Central Governments. Under Section 2 (3) of the draft BBL, the Bangsamoro Government shall, in accordance with the land registration system of the Central Government, administer land registration in the Bangsamoro territory through an office it shall create for this purpose. The Bangsamoro Government shall furnish copies of the titles, deeds, and other instrument to the relevant Central Government agencies. The Bangsamoro Government can act on consultas. The Bangsamoro Government may institute processes to promote more efficient registration of lands within the Bangsamoro.
155. **Potential Issue.** Interpreting the said provision, the Bangsamoro Government would be authorized to create an office similar to the Land Registration Authority (LRA). This office would directly administer the existing

101 Article V, Section 3 (32) of the Bangsamoro Basic Law.

102 Article IX, Section 3 of the Bangsamoro Basic Law.

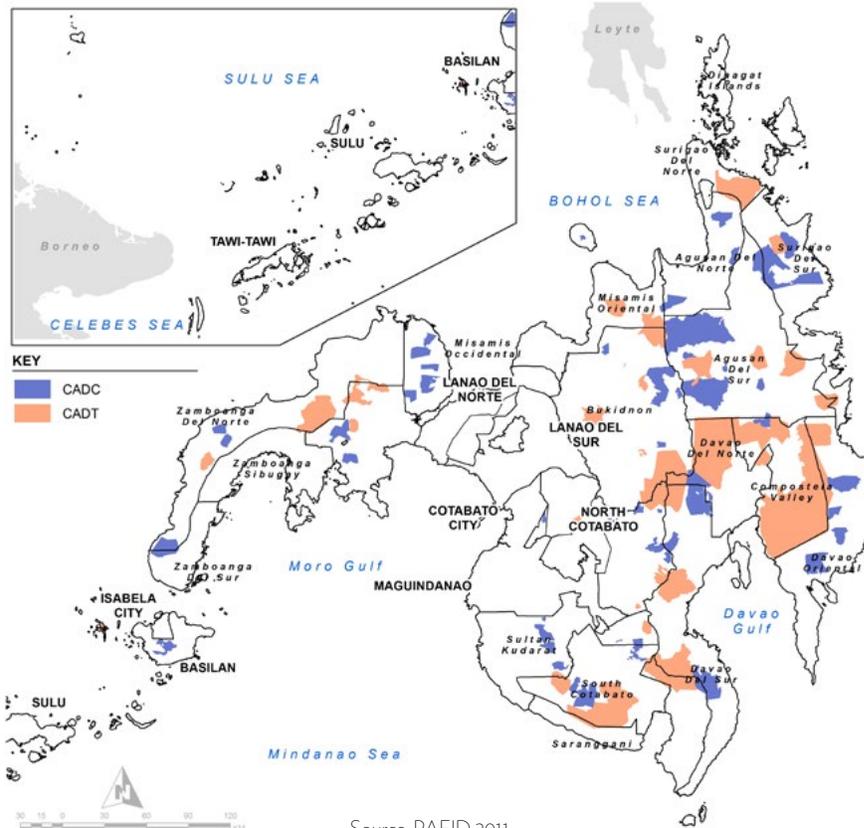
103 *Balboa vs. Ferrales*, 51 Phil. 498 and *Yinlu Bicol Mining Corp. vs Trans-Asia Oil and Energy Development Corporation*, GR No. 207942, January 1, 2015.

ARMM Registries of Deeds in Isabela, Basilan; Jolo, Sulu; Bongao, Tawi-Tawi; Marawi City; Bangon, Marawi City, Lanao del Sur; and Cotabato City for Maguindano. Effectively, the LRA would cede its control and supervision of the Registry of Deeds in the Bangsamoro Territory.¹⁰⁴ Issues regarding the registrability of instruments/deeds would be decided by the Bangsamoro when the power of “consulta” previously exercised by LRA is transferred to it.¹⁰⁵

156. How the proposed Bangsamoro land registration system would operate requires a detailed technical, legal, and financial study since the Torrens system of the Central Government is a title insurance system with liability/indemnity features that is guaranteed by an Assurance Fund created under PD 1529. The system is anchored on the LRA ensuring, through its control and supervisoion of the Register of Deeds, that only land titles that are considered as “indefeasible” are registered. Thus, control and supervision of the Register of Deeds and the registration process through “consulta” and other regulations and issuances by the LRA is an essential part of the system.

157. **Indigenous People’s Rights and Ancestral Domain Claims.** Under the terms of the draft BBL, the Bangsamoro Government would be bound to recognize constructive or traditional possession of lands and resources by indigenous cultural minorities. However, under the draft BBL, the delineation or determination of traditional possession is subject to judicial affirmation, contravening the concept of “self-delineation” under IPRA.

MAP 22. CADTs and CADCs in Mindanao



Source: PAFID 2011

104 Section 6 (b) of PD No. 1529.

105 Section 6 (c), PD No. 1529.

158. Under the original version of the proposed BBL, the determination of IP lands would be through petition in court and shall be instituted within a period of ten years of the effectivity of the Basic Law. The procedure for judicial confirmation of imperfect titles under existing laws shall, as far as practicable, be used in determining/confirming titles to ancestral lands.¹⁰⁶
159. **Potential Issue.** IPs might disagree with the judicial determination of ancestral domain since it diverges from the concept of “self-delineation” provided under RA No. 8371 (IPRA). Under this concept, the extent of the ancestral domain claim is adjudicated solely by the National Commission on Indigenous Peoples (NCIP) based on the evidence/submission of the IP or Indigenous Cultural Community. By contrast, court confirmation procedures are adversarial and claims of private ownership of IPs would have to be contested by the Solicitor-General. The burden of proof would be shifted to the IPs to present evidence sufficient to overcome the presumption of State ownership under the Regalian Doctrine.

C. Translating Pre-colonial Politico-cultural Formations to the Present Governance Context

160. The 2014 Comprehensive Agreement on the Bangsamoro (CAB) between the Government of the Philippines (GPH) and the Moro Islamic Liberation Front (MILF) acknowledges a “Bangsamoro identity,” defined by the parties as ‘those who at the time of conquest and colonization were considered natives or original inhabitants of Mindanao and the Sulu archipelago and its adjacent islands including Palawan, and their descendants whether of mixed or of full blood’ (Part I, Section 5, Framework Agreement on the Bangsamoro). The original version of the proposed BBL specifies the historical governance structures of the Moro Sultanates and Royal Houses.¹⁰⁷ Since the term “Bangsamoro” is used in three ways (as a broad politico-cultural construct; as a geographic area; and as a political entity), the CAB and the original version of the proposed BBL affirm the distinct cultural heritage and birthright of the Bangsamoro peoples to their ancestral homeland, while proposing a distinct political governance for the proposed Bangsamoro territory.
161. The CAB and draft BBL further acknowledge the historical governance structures of the Sultanates of Maguindanao, Sulu, and *Rajah sa Buayan*, and the *Pat a Pagampong a Ranao* (translated with varying degrees of accuracy as Royal Houses, Four Principalities, or Emirates).¹⁰⁸ It is important to note that the datuship and the sultanates remain influential in the Bangsamoro region, notwithstanding external waves of influence from Spanish and American colonial powers, and later the Philippine state.¹⁰⁹ Nevertheless, a study of political dynamics, and land use and ownership patterns on the ground, necessitates an understanding of

106 BBL proponents argue that the intention is to open another option, through “judicial affirmation”, property rights claim of IPs over their ancestral domain instead of merely through “self-delineation”. Thus, the BBL does not deny the “self-delineation” concept in the IPRA of 1997. If that is the case however, such an intention should have been clearly stated in the provisions of the draft BBL on the matter to avoid misinterpretation.

107 For historical accounts of the rise and fall of the Sultanates in Mindanao, refer to Majul (1973 and 1985), Tan (1977, 1989 and 1993), Muslim (1994), Tanggol (1993), and Rodil (2009).

108 The Sultanate of Kabuntalan is omitted in the CAB and BBL but is mentioned in the BDP. Another ethnic group that claims a separate politico-cultural identity that was allied to, but separate from the Sultanates, are the Iranun. See Lidasan (2009).

109 Refer to Saber (1979), Mastura (1984) and Felmin (2008).

these complex structures. As various scholars note, the complexity of present-day Moro society is partially characterized by the varying (and often co-mingling) streams of traditional, religious, and constitutional authority, each of which preside over a group of followers and/or a given territory.

162. If this is the case, placing the disparate Moro ethnic groups under one governance structure is a challenge akin to nation-building for ethnically diverse people despite their common history of struggle, culture and tradition, and aspirations for the future. The challenge is how to be culturally-sensitive without reinforcing the poisonous aspects of the traditional/shadow economy—thereby balancing formal interventions and informal practices, while recognizing and accommodating customary institutions and actors within the national framework.

D. Socio-economic Commitments of the CAB

163. While the CAB is primarily a political settlement, it commits the parties to intensify the delivery of socio-economic programs for rehabilitation, reconstruction and development, in a manner that respects the Bangsamoro right to freely chart their own political, cultural and developmental destiny. In November 2014, the MILF's development arm, the Bangsamoro Development Agency (BDA), launched a Bangsamoro Development Plan (BDP) that articulates immediate and medium-term peace-building and sustainable development priorities and strategies for the Bangsamoro. Vertical conflicts occur in distinct political, economic, social, and cultural contexts, but most concern the distribution of power and resources in the community. Thus, the nature of development programming in the future can play an important role in addressing social and economic injustice.¹¹⁰
164. In support of its goal of achieving “sustainable human development” in the Bangsamoro, the BDP recommends short-term measures to jump-start the regional economy, and medium to long-term activities to sustain and consolidate growth and stability.
165. Medium and long-term activities include the development of value-chains for agriculture and fisheries to generate employment and income. The Plan also seeks to link farmers/fishers with agribusiness enterprises to achieve economies of scale at various points of the value chain, improve transport and processing facilities, and ensure access to credit, technology and markets. Once the agri-food value chain is developed, BDP prescribes the promotion of labor-intensive manufacturing to generate jobs and raise wages.
166. Development planners in the Bangsamoro will need to carefully assess different models for agriculture and agribusiness, with a focus on empowering small holders and small farmers in the region. While acknowledging the role of large-scale agribusiness operations, models that prioritize small tillers and fishers as the main beneficiaries of agricultural productivity and growth should be explored.

110 Hall (2013). “What Works: Documentation of Security Strategies in Maguindanao,” Australian Aid–The Asia Foundation Partnership in the Philippines, 2013 (unpublished document).

E. Normalization

167. The CAB sets out a process of “normalization,” which seeks to help conflict-affected communities ‘achieve their desired quality of life, which includes the pursuit of sustainable livelihood and political participation within a peaceful deliberative society.’ Normalization, as defined by the CAB, has three components: a) security arrangements including decommissioning of the Bangsamoro Islamic Armed Forces (BIAF), redeployment of the Armed Forces of the Philippines (AFP), policing reforms and disbandment of private armed groups; b) socio-economic development; and c) transitional justice.¹¹¹
168. Normalization requires the MILF to undergo a graduated program to decommission its forces, weapons, and installations so that they are put beyond use, with the ultimate aim of a smooth transition for BIAF members to productive civilian life. Thus, a major element of normalization is the delivery of socio-economic packages to support decommissioned combatants and their communities. As a confidence-building measure, the central government and the MILF have also constituted a joint task force to oversee support for the following previously acknowledged MILF Camps:
- a. Camp Abubakar as-Siddique in Maguindanao
 - b. Camp Bilal in Lanao del Norte and Lanao del Sur
 - c. Camp Omar ibn al-Khattab in Maguindanao
 - d. Camp Rajamuda in North Cotabato and Maguindanao
 - e. Camp Badre in Maguindanao
 - f. Camp Busrah Somiorang in Lanao del Sur
169. The mandate of the Task Force is to assess the needs, plan appropriate programs, and undertake the necessary steps to transform these areas into peaceful and productive communities. It is expected that all of these interventions will have spatial implications. Transforming these communities into agricultural production and trading hubs, providing decent and adequate housing, and orderly resettlement of combatants after decommissioning will require systematic land use planning, administration and management to ensure that no displacement will occur in the effort to develop these areas. It should be noted that some of the land area of the camps could be subject to competing claims. Government development programs in contested areas could risk “legitimizing” or at least appearing to legitimize claims of existing occupants. This would complicate efforts to “normalize” these areas. Accordingly, settlement of land-related issues should be seen as an integral part of the normalization process.

F. Mining, Conflict and Displacement

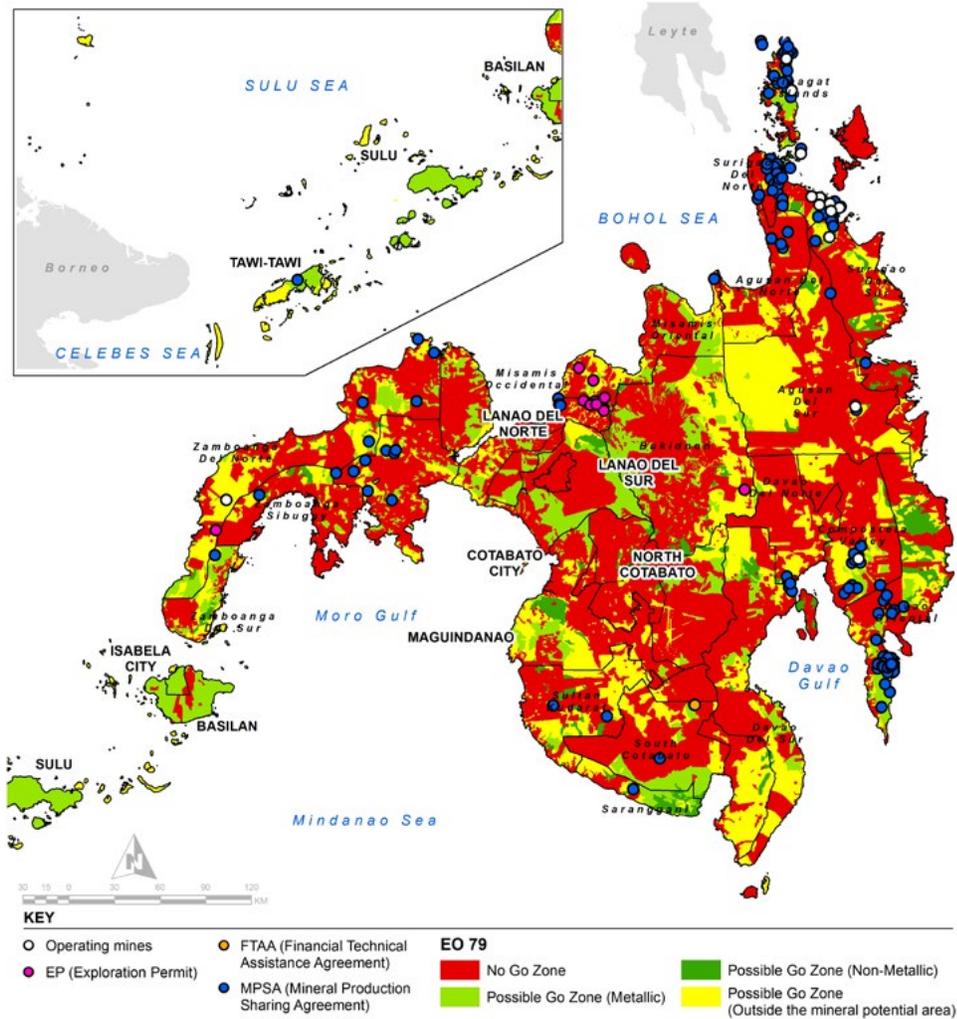
170. The country’s gold and copper reserves are predominantly found in Mindanao (refer to **Map 23**), which is estimated to hold around 70 and 62 percent respectively, of these minerals.¹¹² In addition, almost 40 percent of

111 Framework Agreement on the Bangsamoro, Section VIII (Normalization)

112 Adriano (2015).

the chromite and nickel deposits are found in the island. Thus, it is no surprise that the majority of the large-scale mines in the Philippines (20 out of 38) operate in Mindanao. Of the six regions in Mindanao, Region XIII is the main center of mining activity, with 17 large-scale mines. Regions XI and IX have two and one, respectively.

MAP 23. Mining Potentials in the Philippines (EO 79)



Source: DENR-MGB 2014

171. There is increasing interest in mining operations in ARMM given the presence of rich mineral resources in a number of its provinces. There is one nickel mining operation in Tawi-Tawi (in the island of Languyan) and more are prospecting to open new exploration areas. While systematic data have not been gathered on both large and small-scale mining operations, anecdotal evidence suggests that some operators violate relevant environmental rules and regulations. The problem is complicated by the fact that some small-scale mining operations employ heavy duty construction machines, outside the definition of “small-scale,” which is limited to picks and shovels. Thus, the true extent of the environmental degradation caused by mining is difficult to monitor and measure. The alleged involvement of some local politicians in these operations also protects them from effective government oversight.

172. The mining industry is acknowledged as a potential source of growth in the region that could generate revenue to underpin genuine fiscal autonomy for the Bangsamoro entity. However, the entry of large-scale mining or a proliferation of small-scale mining would put additional pressure on land ownership, particularly in the upland where most minerals are found. Particularly for the IPs, who bore the brunt of displacement during the heyday of logging in the 1950s till the 1970s, there is a risk they will suffer another round of displacement if mining expands. In turn, the likelihood of a resurgence of conflict would increase given the weakness of institutions to enforce regulations and address the social conflicts that often emerge in parallel with extractive industries. Also, if proper environmental safeguards are not put in place and observed, the incidence and impact of natural disasters could rise, intensifying the suffering of the Bangsamoro, particularly those in the lowland areas.

The background is a solid teal color with a faint, light-colored topographic map overlay. The map shows landmasses and terrain contours, with a darker teal color used for the landmasses and a lighter teal for the oceans. The map is positioned in the upper half of the page, with the text overlaid on it.

VIII.

Conclusions and Recommendations

VIII. Conclusions and Recommendations

A. Conclusions

173. Marginalization through unjust dispossession of land took place in four waves dating back to 1898. In the initial phases, the foundation was laid with a series of discriminatory land policies and laws. Yet the social, economic and political impacts began to be more acutely felt during the 1950s and 1960s as programs to resettle Christians from the land-poor northern regions of Luzon and the Visayas into Mindanao were expanded.
174. While initially welcomed, over time the settlers began to consolidate their growing economic influence with political control. As land became increasingly scarce, mistrust began to grow between the original inhabitants—Muslims and IPs—and the settler communities. Eventually this erupted into violence, peaking in the Martial Law era in the 1970s as government-condoned militias killed and displaced thousands of Muslims. This, in turn, contributed to the emergence of a Muslim armed insurgency.
175. Unregulated business interests were at the core of the problem as land was consolidated for large-scale plantations. Later, massive logging depleted the natural resource base, causing major environmental degradation, with particularly damaging impacts for indigenous communities.
176. In contemporary times, displacement due to conflict – often driven by communal violence and clan feuds – and natural disasters has become an increasingly common source of dispossession.
177. The waves of dispossession have left a legacy of poverty and violence. The conflict-affected areas of Mindanao are the poorest in the country. Moros and IPs have been minoritized in their own land, and largely marginalized from genuine political control.
178. A number of institutions—both state and non-state—have been established to try to resolve land conflicts. The institutions of the state—whether through the judiciary or the executive—carry the authority of the government and the potential to come to final resolution of long-standing land disputes. But they tend to be inaccessible, expensive, time-consuming and vulnerable to elite capture.
179. Non-state institutions operating mostly at the community level—some facilitated by civil society organizations—enjoy local legitimacy and an emphasis on promoting community harmony. But the sustainability of dispute resolution is questionable at this level.
180. Efforts to resolve conflict are hamstrung by a complicated institutional and policy framework for land administration and management in the Philippines. The ongoing proliferation of conflicts over land demonstrates that there are major gaps in the current dispute resolution mechanisms. The prevailing political

economy and the strength of status quo forces would complicate efforts for reform, suggesting that a new body will need to be formed to properly address this problem.

181. Despite the challenges, experience from the various dispute resolution mechanisms suggests there are some common elements of success on which a new body could draw: These include: a) the need to convene all relevant parties to a claim—competing claimants, relevant national and local government agencies, the security sector, community and religious leaders and civil society. This brings all potential issues to the surface while also bringing to bear the technical capacity and authority of the state, the moral legitimacy of community leaders and the relative independence of civil society; b) the need to painstakingly resolve competing claims plot-by-plot, claim-by-claim. The story of each dispute can be complex and diverse. Wholesale solutions are neither legally nor socially feasible; and c) the need to ground dispute resolution in healing and reconciliation to encourage acknowledgement of historical injustices.
182. There are no easy solutions to this problem. Efforts to address unjust land dispossession will face a number of important challenges, including: a) population growth, that will increase pressure on land; b) technical weaknesses in the existing land administration and management agencies; c) commitments in the Comprehensive Agreement on the Bangsamoro to intensify development and support normalization in the area of MILF Camps, which carry spatial implications; and d) the risks of a possible expansion of mining in areas currently affected by conflict.
183. The recommendations that follow below seek to address these challenges and are broken down into a series of foundational recommendations, then specific proposed actions under two scenarios (i.e., under the current institutional arrangement and when a Bangsamoro Government is established) and the following sub-categories: a) Dealing with the Past; b) Strengthening Land Governance; c) Addressing Natural Disasters; d) Managing Mining Risks; and e) Meeting Normalization Commitments.
184. The recommendations section is first grounded with a discussion below on global experience on land reparations and restitution to inform the proposed actions for Mindanao.¹¹³

B. Global Experience and its Relevance for the Philippines

185. **The Philippines is not the only country to face multiple layers of land-related grievances and historical injustices in the context of a peace process.** In the past two decades a number of countries around the world have attempted to deal with the same challenges.¹¹⁴ Given the context of the proposed Bangsamoro region, global experience can usefully inform a) the *process* that will be used to develop the policy to address land-related grievances and historical injustices; b) the *remedies* that will be used to address those grievances

113 Annex F also provides additional analysis of key principles for Land Restitution in Conflict Settings.

114 The experiences considered for this report include past and ongoing post-conflict land restitution and compensation efforts in Bosnia-Herzegovina; Colombia; Croatia; Iraq; Kosovo; Nepal; Rwanda; Serbia; South Africa; and Yemen; land restitution efforts following the transition from communist to democratic governance in Eastern Europe and, as yet unresolved, policy propositions to address conflict-related land issues in Libya, Syria, and a number of other conflict-affected countries in Asia (e.g., Myanmar) and Africa (e.g., the Democratic Republic of Congo).

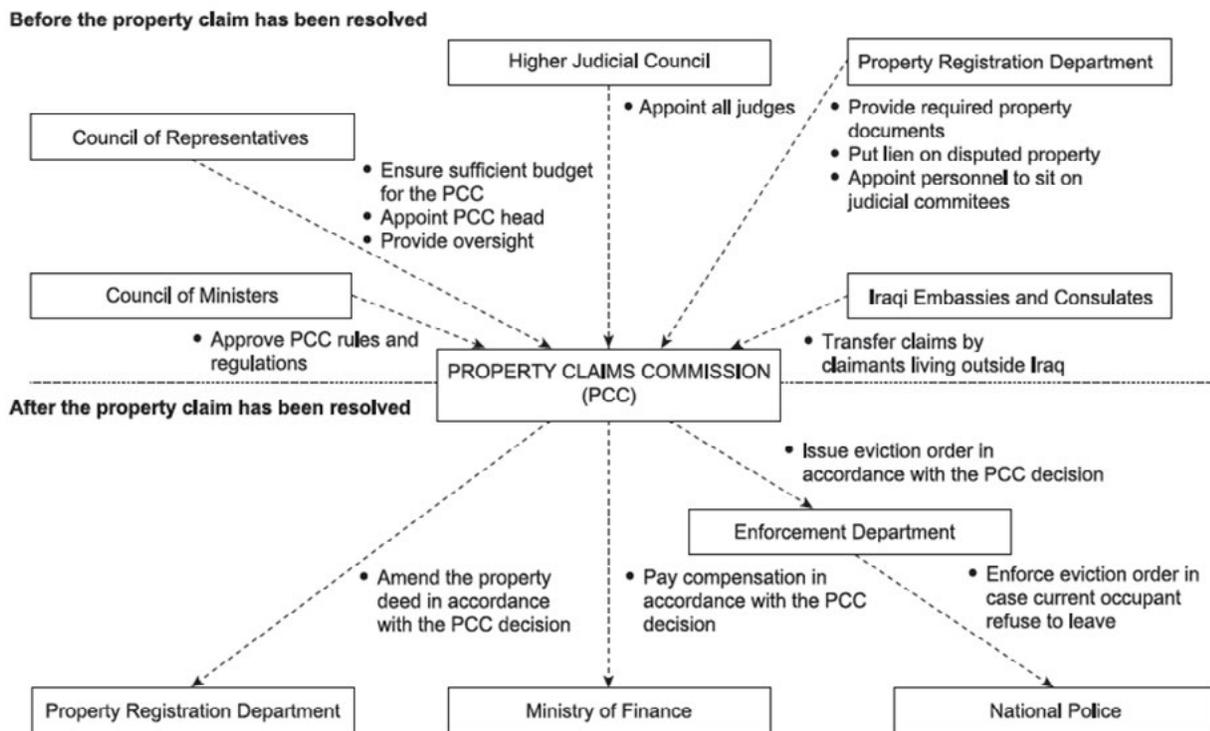
and historical justices; c) the *institutional structures* that could be established and used to implement the policy; and d) the *eventual implementation* of this policy, which is usually where the biggest challenges lie.

186. **Developing and implementing a policy to address land-related grievances and injustices requires a broad political consensus.** This is especially important in conflicts that, as with the one in Mindanao, have pitched different ethnic, religious or national communities against each other and where the post-conflict environment is characterized by identity politics. International experience teaches that, in such environments, consensus-building around the solutions to address land-related injustices and grievances is almost as important as the content. This is the case for a number of reasons including: conflict transformation and trust building between the state and citizens; conflict prevention; and the “practicability” of the solutions proposed, as in a post-conflict context, solutions for land issues are often opposed by significant parts of the affected population. The “listening process” carried out by the TJRC across Mindanao is an important starting point for consensus-building, but this will need to be complemented by a subsequent participatory process that focuses on concrete options for addressing land-related grievances and injustice.
187. In this regard, experience of other countries warns against the use of open-ended participatory processes when it comes to discussing concrete solutions, as they tend to lead to proposals that are not practical. A multi-layered process, that starts with political and community leaders working out a set of realistic options which are then tested and further refined through a broader participatory process at the community-level, can be usefully considered. Key issues that have been most difficult to find consensus around in other countries include the scope of the policy to address injustices and grievances (e.g., how far to go back in time and what type of injustices to include); what remedies to foresee for those whose land and property rights were violated; what level of resources to allocate for implementation; where these resources should come from (central and/or proposed Bangsamoro Government?); and what institutional set-up is required to put the policy into practice, especially when, as is the case in Mindanao, inter-community trust and trust in the state has been eroded through years of unrest.
188. **Restitution and compensation are the most common remedies.** In international policy documents such as the *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the Pinheiro Principles), issued in 2005, restitution is identified as the preferable remedy for those who lost their land or homes through the violation of their property rights. For the Mindanao context, experience from other countries shows that: a) restitution tends to become more complicated the further away in time the land and property losses occurred and the more the actual situation on the ground differs from the situation at the time of the loss (e.g., through migration, population growth, environmental changes, etc.); b) a careful analysis of the likely conflict impact of restitution is required ahead of the adoption of any policy, given the risk of implementation undermining rather than supporting peace; c) upfront consideration of what should be done regarding those who will lose out in the restitution process (e.g., good faith secondary occupants who had nothing to do with the initial violation of property rights) needs to be an integral part of the policy thinking, to avoid a new set of grievances; and d) restitution will work in certain communities and/or for certain type of violations and/or for certain types of properties/land, but not for all.
189. **Experience from other countries has shown that financial compensation is usually easier to implement than restitution.** It does not require significant changes to the actual land and property situation on the ground. This can be especially attractive in contexts, like Mindanao, where land and property rights violations have occurred over many years or decades. Countries that have adopted financial compensation as (part of) the answer to past land and property rights violations have, however, also tended to face some challenges,

which will be also relevant in the Mindanao context, such as: (a) finding sufficient financial resources; (b) determining the amount of compensation, including who will benefit from future land value gains; and (c) what to do with those who acquired land and/or property illegally, if there is no restitution compelling them to hand it back to the rightful owners? International experience has shown that, for a post-conflict effort to be legitimate, it is critical that those with grievances see that past illegal land and property takings are being addressed. Different options have been considered, including the transfer of property rights from victims who obtain financial compensation to the state, which then proceeds to recuperate the land and/or property from those who illegally obtained it in the past. Once in the hands of the state, the land and property can then also serve as a source of funding for the compensation effort.

190. **In complex environments like Mindanao, a flexible mix of compensation and restitution tends to work best, especially if accompanied by a formal recognition of the past violations.** While most programs leave it up to the victims to decide whether to ask for restitution or compensation, they often give the decision-making body some discretion to overrule the victims' request e.g., when restitution is physically impossible or would be bring undue hardship to good faith current occupiers.
191. **In terms of institutional structures, countries have chosen different routes, but with a clear preference for the establishment of new and dedicated institutions.** The reasons for creating a new institution rather than using existing ones tend to be both symbolic—the creation of a dedicated land and property commission can by itself send a powerful signal that the authorities are serious about tackling a legacy of past abuse—and operational. Relevant operational considerations include: a) the need to avoid overburdening existing land dispute resolution mechanisms with the exceptional “dealing with the past” caseload, as they will need their capacity to continue addressing “ordinary” disputes; and b) the necessity for more flexible and victim-oriented rules and procedures, adapted to the caseload and context at hand.
192. When considering the creation of an institution dedicated to addressing conflict-related land and property issues, international experience highlights the need to ensure that: a) all relevant existing state institutions that have a role in the process are also given sufficient resources, as failing to do so will adversely impact the ability of the new institution to carry out its mandate (as visualized in **Figure 6**, the Iraq land compensation and restitution process, for example, involves many state institutions in addition to the Property Claims Commission established for that purpose); b) expectation management measures are put in place, as new institutions invariably take time to function properly; c) the new institution is given a clear mandate and jurisdiction that avoids competition with existing institutions; and d) sustainability is kept in mind when it comes to designing the institution and its mandate, as international funding tends to reduce as time goes by and hence the national budget needs be able to (eventually) fully fund both the policy and the institutions in charge of implementing it.
193. One important component of the design of a new institution is the type of process it will use to determine the historical and/or conflict-related land and property claims at hand. International practice has varied in terms of both administrative and judicial and quasi-judicial decision-making processes. National and local practices and perceptions about what constitutes a “sufficient and just” process must be the determinant in this regard. Many national processes have struggled to find the right balance between the need for an efficient process that can process a high number of claims in a reasonable period of time and the need to ensure that outcomes are not only just but also seen to be just. The tendency has been to overburden processes with complex rules and procedures, resulting in delays and, in some instances, a subsequent

FIGURE 6. Institutional Arrangements: Iraq Land Compensation and Restitution Process



loss of faith amongst victims. The most successful efforts have tended to use simple rules and procedures that are accessible for victims, with continual corrections to increase fairness and efficiency. Finally, country experiences have also shown the need to consider conflict impact analysis when deciding on what type of process will be used to resolved competing claims. In complex environments like Mindanao, a conflict impact analysis might suggest a preference for mediated rather than adjudicated outcomes for such claims.

194. **International experience has shown that a successful implementation of programs to address past land and property rights violations requires robust and sustained political engagement.** In many post-conflict environments, there is a tendency to regard the development of a policy to deal with land-related grievances and historical injustices as political, and the implementation as primarily technical. However, it has been the experience of all programs that successful implementation requires solid and sustained political engagement. Issues around which past and existing programs have stumbled due to a lack of continued political engagement include: a) funding problems a few years into implementation, when dealing with past injustices becomes less of a priority; b) the enforcement of land restitution decisions due to local resistance and/or spoilers, including violence against those that benefit from restitution; and c) unwillingness or outright refusal by supporting institutions to carry out their part of the work. Experience shows that a robust, independent monitoring and complaint mechanism, possibly with international involvement, can be a useful way to counter this tendency of waning political interest in the process, especially if it is given sufficient authority to initiate action when problems arise.

195. **A final point from international experience is that programs to address past land and property violations have tended to fail due to an insufficient consideration of “practicability” during the policy development process.** In contexts where land management institutions are weak and vulnerable to elite capture, it is difficult to implement policies to deal with past injustices. Too often, however, policies and programs have been designed as if these weaknesses disappeared with a peace agreement. Experience in all countries where land and property restitution and/or compensation programs have been implemented shows that this is never the case. What can be learned from past and ongoing efforts is that they can only work if, from the start, policy design: a) integrates the actual state of governance and rule of law on the ground; b) is preceded by, and based upon, capacity assessments of the relevant institutions and mechanisms that need to play a role in policy implementation; and c) takes into account the political economy around land in the different communities and areas that it is intended to cover.
196. **A final consideration regarding “practicability” has to do with time.** Almost all international efforts of this kind have taken much longer than planned. Depending on the context, this has had different adverse effects, including a loss of trust in the process (in turn leading to affected parties taking matters into their own hands to get their property back); failure to meet objectives such as ensuring durable solutions for displaced persons within a reasonable period of time; and difficulty obtaining resources for mandate extensions. These experiences underscore the need to involve experts in process modeling when estimating the time and resources required.

C. Moving Forward: Recommendations

197. Achieving the vision of a peaceful and prosperous Mindanao will require job creation, and inclusive growth and security. Ensuring security of land tenure and resolving past injustices will be central to this aspiration. The section below sets out forward-looking recommendations that seek to underpin a just and sustainable future for Mindanao.

The starting point: Political commitment and improved land governance (“Priority 1”)

198. Land rights and addressing past grievances and unjust dispossession goes to the heart of the cultural, social, political and economic make-up of Mindanao today. On the one hand, this is why addressing land issues is so critical for sustainable peace and development and is, hence, a call for urgent action. On the other hand, however, this underscores how any intervention of sufficient scale and scope will have considerable impact. It will meet resistance along the way and is, hence, also a call for caution. As indicated in the section above on international experience, addressing land in a post-conflict environment can only be successful if there is a solid and sustained political commitment from the State and relevant political elites to not only design and adopt the necessary policies and laws but also to see them through to full implementation.
199. **Ensure solid and sustained political commitment.** Dealing with past and recent (if not ongoing) land dispossession in Mindanao will require significant and deep reforms in land management; the provision of

(some) reparations and the undoing of (some) past injustices; and a considerable strengthening of the rule of law and good governance more broadly. The scale and impact of what is needed is such that it can only be done with the solid and sustained political commitment of key political actors in Manila and in Mindanao. Creating a new and dedicated institution to deal with land will not be sufficient by itself: such institution will only be able to carry out its mandate if there is a political consensus about the general direction among key political, economic, social and cultural actors. So the first step needs to be a solid dialogue and political negotiation among those key actors to forge this consensus and commitment. This should be the priority task of the Sub-Commission on Land Dispossession in the proposed National Transitional Justice and Reconciliation Commission for the Bangsamoro (NTJRCB).

200. **Invest in good governance in the land administration and management sector.** Good governance in land administration aims to protect the property rights of individuals, commercial entities and the state and centers around transparency, accountability, rule of law, equity and effectiveness. This requires, among other things, investment in staff training and management and the establishment of solid mechanisms to ensure accountability if legal rules and procedures are flouted or breached. While it is often challenging to change existing institutional cultures, the establishment of new institutions and re-engineering of land agencies as recommended in this report provide a good opportunity to make a new start. However, it is important to ensure that all institutions and entities that play a role in ensuring peaceful land and property relations, whether new or existing, are included in efforts to ensure good governance. Experience has shown that without a clear commitment to and investment in good governance, land administrations tend to falter, especially in post-conflict environments where trust in state institutions tends to be low. This is even more so for mechanisms to deal with past injustices related to land, which can only achieve their objectives in full if they are accompanied by a broader, serious effort to improve land governance and the rule of law.
201. **Develop and implement accessible and acceptable dispute resolution mechanisms to address land conflicts at the community level.** Efficient and community accepted dispute resolution mechanisms are essential to address land conflicts in the Bangsamoro territory. Under the original draft Bangsamoro Basic Law, the regular courts would continue to operate and are expected to decide land rights cases. ARMM, in collaboration with Land Administration and Management-related national government agencies, may introduce alternate dispute resolution processes that suit the community as a means to expedite the resolution of all land types of land disputes. This alternative dispute resolution process may eventually be included in the land administration law to be enacted by the Bangsamoro Parliament, once established. It should build on the experience of bodies such as the NaTuLaRan Mu alliance (see **Box 4**).

Laying the Foundations: Filling Data Gaps and Building National Consensus (“Priority 2”)

202. This report has highlighted some of the major social, economic and political impacts of land dispossession in Mindanao. But it has not been able to fully document and quantify the scale of the problem due to data constraints. Addressing these constraints is a necessary pre-requisite for further action to ensure a comprehensive account of the problem and that solutions can truly help to address historical and contemporary injustices.
203. **Address the land data gap.** The paucity of land data, the lack of a central repository for land data, and the absence of cadastral surveys in ARMM present a huge challenge to identify lands unjustly acquired.

Addressing the data gap is a critical step before comprehensive solutions can be formulated. Thus, it is recommended to carry out a comprehensive survey to map/identify all untitled lands and assess in further detail to what degree existing land titles are overlapping or contradictory. In short, a comprehensive exercise is needed to fill the land data gap and pave the way for an eventual formal recognition of all land tenure rights and settlement of competing land claims related to historical dispossession in the Bangsamoro area. This would need to be conducted in a conflict-sensitive manner, as the mere act of documenting claims would be seen as a challenge to the status quo, whereby many powerful interests benefit from ambiguity.

204. **Conduct an “Intentions Survey.”** Due to cycles of displacement and waves of dispossession, there are reports that Moros who were displaced are contemplating returning to their communities of origin once the BBL is passed. Expectedly, this is creating anxiety among current residents of these places who fear they will be disenfranchised once the Bangsamoro Government is installed. There are reports of Christian groups arming themselves to prevent such an eventuality. That said, the TJRC “Listening Process” (refer to **Annex B**) shows that most respondents recognize that returning to their communities of origin will be complicated and could trigger violence. Accordingly, many suggested that they are willing to settle for reparations. Others propose that a certain portion should be allotted to them while allowing current residents to stay or relocate in portions assigned to them. Whatever the final solutions will be, it is best to have *a priori* determination of the intention of those who were displaced and dispossessed to understand the scale of the problem and the nature of remedies considered acceptable to those most affected. An “intentions survey” would be a critical input to inform the design of policies and programs to address the needs of the displaced/dispossessed.
205. **Deeper examination of land and property conflict in the island provinces.** The 2013 joint WB-IOM scoping study highlighted that land conflicts in Basilan, Sulu and Tawi-Tawi are different to those experienced in Central Mindanao. The causes of conflict on mainland Mindanao were not evident to the same extent in the islands. In particular there was little Christian settlement and land was less important as a source of wealth in an island economy. In BASULTA, most land conflict is between Moro clans. The Conflict Alert System/BCMS demonstrates that despite the absence of these factors, land conflict incidence and intensity remains high. External researchers are unable to access the island provinces due to security restrictions. But local universities could be tapped to conduct a more in-depth study to inform government efforts to address land conflict prevailing in these provinces because of their unique land ownership structure and history. This study should include access to fishing grounds for indigenous groups such as the Badjao.
206. **The remaining recommendations are based on two scenarios.** The first identifies activities to be undertaken under the current institutional/legal arrangement, while the second are the reform initiatives that can be implemented by the Bangsamoro Government once established.

Scenario 1: Status Quo

A. Dealing with the Past

Creating the Institutional and Legal Architecture (“Priority 1”)

207. **Policy and agency for land reparation.** The Framework Agreement on the Bangsamoro commits the parties as follows: ‘whenever restoration is no longer possible, the Central Government and the Government of the Bangsamoro shall take effective measures for adequate reparation...’ (Section 6.2). To meet this need, the key recommendation of this report is to establish a dedicated Agency to investigate cases of unjust dispossession and adjudicate and/or mediate these cases through to resolution through restitution and reparations. It should also settle land cases where there are competing claimants holding valid titles to the same property and reach a solution agreeable to both parties. The Agency will have to agree on a standard valuation formula in cases where reparation is agreed upon by both parties. A reparations fund would need to be established for this purpose.
208. **Introduce community land rights clarification processes as legitimate and legally admissible.** The frequent absence of basic documentation regarding land rights renders restitution and compensation more complex. However, the absence of documents can be addressed through “social cartography” employing “human archives”, i.e. by employing community-based approaches to establish past or present land use and ownership patterns. While this has been done elsewhere, this can only be used in the Philippines if the necessary laws and regulations are put in place that give the outcome of these processes legal validity (e.g., as part of a set of transitional rules that will be applied to land rights in Mindanao until when the implementation of the “dealing with the past” effort is completed).

Creating the political environment: national reconciliation and dialogue around historical injustices and listen to the IP narrative (“Priority 2”)

209. **Conduct national reconciliation/dialogue.** The acceptability of solutions to address dispossession of land will partially depend on whether the general public is aware of the historical injustices committed against the Moros and the IPs and recognizes the need to take restorative action for healing and reconciliation in Mindanao. Unfortunately, the vast majority of the Filipinos, even policy makers, are unaware of these atrocities as they are insufficiently covered in historical accounts. A holistic ‘dealing with the past’ approach is therefore key to acknowledge what happened through initiatives of historical memory and to engender support for a reparation program for communities affected by land dispossession. As recommended in the TJRC report, the Sub-Commission on Land Dispossession should collaborate with the Sub-Commission on Bangsamoro Historical Memory to ensure that this history is recorded.¹¹⁵ A number of concrete initiatives could be undertaken in this regard, for example, public or ‘closed door’ hearings on land dispossession, the revision of school history textbooks to include a chapter on the history of land tenure and dispossession in Mindanao, and the introduction of public memorials and historical markers to acknowledge the cultural heritage of the Moros and indigenous peoples.
210. **Listening to narratives of dispossession.** An important element in the process of reconciliation and

115 Concerning the mandate of the Sub-Commission on Bangsamoro Historical Memory, see: TJRC Report. P.77.

dialogue is the active engagement with the different groups affected by the conflict. With respect to land dispossession, there is a need, in particular, to engage with various communities of indigenous peoples and to listen to their narratives. Like the Moros, their welfare and livelihood has been adversely affected by land dispossession and yet their history is less well known. Listening to the indigenous peoples and acknowledging their perspectives in the narrative of land dispossession in Mindanao is critical not only with respect to inclusivity, but also to achieve a greater sustainability of the proposed solutions. The narratives could be elicited in the form of public or ‘closed door’ hearings or in a series of dialogues between the Bangsamoro and the leaders of indigenous peoples. The hearings or dialogues should aim to identify the experiences of land dispossession and oppression particular to the two groups. Further, they should determine common needs and recommend context- and gender-sensitive solutions. One common goal should be to arrive at a consensus on principles concerning reparations for land dispossession that respect the needs and interests of all involved parties.

211. **Develop publicly accessible archives on land issues.** Archives specifically focusing on land issues should be developed to protect and preserve key documents. The archives should be administered in such a way that they are publicly accessible and, as such, serve the needs of scholars and researchers to improve their understanding of the history of land tenure and dispossession in Mindanao and to provide the public with a glimpse of the lives and struggles of Mindanao’s early inhabitants. The archives can be organized in a decentralized manner and, for example, attached to institutions of higher learning, such as the State university system in Mindanao and the Sulu archipelago.¹¹⁶
212. The reports produced by the TJRC Study Groups can form part of the materials for the “truth-telling” exercise. These reports should be summarized in short videos, infographics and other more palatable media. This report of the Study Group on “Marginalization through Land Dispossession” is the first attempt to systematically examine archival materials on changes on population and ethnic mix in Mindanao, resettlement patterns, political boundaries, deforestation, conflicts and other indicators over a century and overlaying these changes on maps for better visual appreciation. Together with the other reports, it can serve to educate the public, in particular policy makers, to understand why the just claims of the Bangsamoro should be addressed.
213. In Mindanao, as elsewhere in the Philippines, inadequate land management, a rise in extreme weather events, population growth, and increasing land prices have resulted, on the one hand, in considerable land areas that are now degraded and/or more vulnerable to natural disasters and, on the other hand, in a considerable number of people living in such areas. In an effort to address the heightened threat of natural disasters, Congress of the Philippines adopted R.A. No. 10121, known as the “Philippine Disaster Risk Reduction and Management Act of 2010”. This act should be supplemented with an act providing legal protection for Internally Displaced Persons (IDPs). Although it is estimated that as many as 3.5 million people have been displaced by armed conflict in Mindanao in the last fifteen years, there is currently no legal framework in the Philippines that protects the rights of IDPs, who often suffer loss of land and livelihood due to displacement.¹¹⁷

116 This is one of the recommendations of the study on archives mandated by the TJRC as part of its assessment on ‘dealing with the past’ in the Philippines.

117 For a more detailed discussion of the lack of legal protection for displaced persons, see: TJRC Report. Pp. 40-42.

B. Managing Mining Risks

Preventing new conflict by assessing the impact of high-value natural resource exploitation on land use and land rights (“Priority 3”)

214. **Assess the current and future impact of high-value natural resource exploitation on land use and rights in Mindanao.** Unregulated commercial interests related to natural resource exploitation have been a significant cause of violence, displacement and land dispossession. Should the peace process hold, interest in high-value natural resources such as gold and copper is likely to grow. While, if well-managed, this could contribute to economic growth and prosperity and potentially underpin genuine fiscal autonomy for the Bangsamoro, it also entails significant risks, including the risk of further land dispossession. To better understand the prospective impacts – positive and negative – we recommend an assessment on the current and future impact of the exploitation of high-value natural resources on land use and land rights in Mindanao. This could include an analysis of the current mechanisms to protect existing land rights; involve communities in decision-making about new concessions/rights to exploit high-value natural resources; and the resolution of disputes. Recommendations for action should integrate a conflict-sensitive approach to natural resource exploitation in Mindanao and identify possible needs for reform.

C. Meeting Socio-Economic Development and Normalization Commitments

Prevent future land conflict in the context of normalization (“Priority 3”)

215. **Ensure coordination between the land administration and the government agencies leading the normalization process.** As noted above, the normalization process under the Comprehensive Agreement on the Bangsamoro commits the parties to intensify socio-economic development, including transforming the six acknowledged MILF Camps into zones of peace and prosperity. Given the potential for land claims in the area of the Six Camps, there will be a need for close coordination between the land administration and management agencies and the government agencies leading the normalization process (including OPAPP, DSWD, and DA). The proposed Sub-Commission on Land Dispossession or another separate body (see the recommendation below) should be given jurisdiction to address any land claims related to or affected by the normalization process and especially, the transformation of the former Camps.

Scenario 2: Upon the establishment of the Bangsamoro

216. **Adopt Policies to Address Landlessness, Land Conflicts, and Dispossession (“Priority 2”).** The draft BBL stipulates that exclusive powers will be vested in the Bangsamoro Government on the administration and management of lands in the Bangsamoro territory. This power provides a unique opportunity to establish a more efficient and effective land administration system. Re-engineering the system would require changes in both laws and institutional mandates and responsibilities. This would be a complicated process entailing extensive research, significant human and financial resources, close cooperation between land-related national agencies and their Bangsamoro counterpart, and unstinting commitment from the national and Bangsamoro leadership. A policy framework does exist describing (refer to Annex E which provides a detailed summary) how the land tenure situation in the Bangsamoro could be effectively addressed. It involves five major phases, the implementation of which will take many years before a Bangsamoro land

administration system could be fully operational.

217. **Re-design the provision of land administration services (“Priority 2”).** The current cadastral framework in the Philippines (established under various and conflicting national land laws) does not support a unified parcel reference system. A number of factors has created confusion in the provision of land administration services: a) the dual systems of land titling (direct and indirect granting process); b) the divide between agencies exercising survey, titling and registration functions; c) the overly rigid conventional survey system; and d) the institutional failure to create a common and updatable system of parcel or cadastral indexing that integrates current attributes for the rights held for each land parcel has created confusion in the provision of land administration services. This situation has at times been exploited by those who could benefit from ambiguity and loop-holes in the system, including public servants.
218. **Enact a new legal framework for land administration (“Priority 2”).** To effect the re-design services, the Bangsamoro legislature would need to enact a new land administration law. This law could include a new land agency—the Bangsamoro Land Commission—to establish a unified parcel reference system that underpins all land administration functions of the government (i.e., titling, registration, taxation and land management). Moreover, the land administration system should be based on a unified cadastral framework supported by information technology. The objective of a unified system would be to eliminate inconsistent data between government agencies exercising land administration functions.
219. To this end, the Bangsamoro authorities would need to expand the recently completed cadastral survey delineating political boundaries in ARMM to determine actual land ownership/usage rights and to identify existing competing claims and lands which were unjustly obtained. This would require substantial resources and expertise but is an indispensable first step.
220. **Clarify legal and operational responsibilities.** A detailed study on how the land registration system of the Bangsamoro Government would operate is needed, as the Torrens system of the Central Government is a State title insurance system with liability/indemnity features. Under the draft BBL, land registration appears to be treated as a mere recording of rights. It is suggested that discussions with the Land Registration Authority (LRA) should be held to thresh out possible problems that could emerge from the shift of this mandate from the Central to the Bangsamoro Government.
221. It is also recommended that a serious land reparations database, particularly data to be used in legal proceedings, should eventually include cadastral, geo-tagged, and community-based participatory mapping sets, as a nested series of models. The feasibility of such an endeavor, however, will require further study.
222. **Land administration and management in the long-term.** It is important to note that the recommendations under this scenario are of a long-term nature. Although the process could be initiated by the Sub-Commission on Land Dispossession proposed by the TJRC, a more permanent body, as suggested above, would need to be set up by the Bangsamoro authorities to complete the work of re-engineering existing agencies and to attend to the administration and management of lands in the Bangsamoro territory in the future. This requires further reflection concerning both the legal and operational framework of such a body, as noted above, and the planning and capacity-building necessary for such a body to conduct its work.

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Annex A. Land Conflict in Mindanao (WB-IOM Partnership)

International Organization for Migration-World Bank Partnership in Support of the Transitional Justice and Reconciliation Commission

CONCEPT NOTE SUPPLEMENTAL TASK DESCRIPTION
AUGUST 1, 2015

Background

1. **It is widely acknowledged that conflict over land is a major source of violence in parts of Mindanao.** It is equally well recognized that uncertainty over land usage rights is a significant impediment to investment in conflict-affected areas, in turn stifling opportunities for job creation that can promote inclusive growth and stability.
2. **There are both historical and contemporary dimensions to the problems over land.** The interlocking of land issues and identity-based conflict can be traced to the introduction of the Regalian doctrine of land ownership by the Spanish colonizers in the country. Prior to the arrival of the Spanish in the 16th century, land was communally held by Muslims and other groups of indigenous peoples (IPs). During the American colonial regime at the turn of the 20th century, dispossession of land held by indigenous peoples accelerated with an emphasis on titling lands for private ownership that clashed with the tradition of ancestral domain. A series of land-related laws that discriminated against Muslims and IPs was passed during the American colonial period.
3. **Migration from the North has driven many Muslims and IPs from the best land.** After the country gained independence, the Christian-dominated government in Manila encouraged Christian dwellers from the northern islands of Luzon and Visayas to settle in Mindanao. The intention was to ease land pressure arising from rapid population growth in the northern islands and accelerate the exploitation of Mindanao's natural resources for national development. The process started in the as early as the 1930s when the Commonwealth government encouraged and supported migration to Mindanao, spearheaded by President Quezon and led by General Paulino Santos. This was accelerated in the late 1950s during President Magsaysay's term. The imposition of the Regalian doctrine by the central government, asymmetric knowledge of the land markets and, in some cases, fraudulent land acquisitions led to the take-over of much land by the settlers. Many Muslims and IPs were pushed to the inland and marginal areas of Mindanao while the newly arriving Christians occupied the fertile, accessible lowland and coastal areas. The demographic profiles of numerous localities in Mindanao changed radically over recent decades. Having constituted 76 percent of the population of the island in 1903, Muslims now comprise less than 20 percent of the population of Mindanao.
4. **In contemporary times, land grabbing by powerful interests – often local politicians with private armies who also control private sector activity – has become a significant issue.** Significant displacement due to violent conflict has also seen many people forcibly pushed off their land, with many proving unable to restore their rights once spikes in conflict dissipate.

5. **The quest to reclaim their ancestral domain remains central to the Moro cause.** In its struggle of the 1970s and 1980s, the Moro National Liberation Front (MNLF) asserted a claim to 14 provinces of Mindanao (out of 24 at that time) and Palawan as part of their ancestral domain. While the concept of ancestral domain does not appear in the October 2012 Framework Agreement on the Bangsamoro or the March 2014 Comprehensive Agreement on the Bangsamoro between the Moro Islamic Liberation Front (MILF) and the Government of the Philippines (GPH), the centerpiece of the Agreement is to establish the Bangsamoro, a new autonomous political entity to replace the Autonomous Region in Muslim Mindanao (ARMM).
6. **The Framework Agreement on the Bangsamoro includes a specific section on property rights.** Section VI (2) of the FAB states that “vested property rights shall be recognized and respected” while acknowledging at the same time that the rights of those subject to “unjust dispossession” shall be acknowledged. Where the rights of those unjustly dispossessed can no longer be restored, the FAB commits the GPH and the MILF to “take effective measures for adequate reparation.”¹¹⁸ Finally, the FAB states that “Indigenous Peoples’ rights shall be respected.” The Framework Agreement provision on property rights is part of the section on Basic Rights and seeks to balance vested rights with the need to acknowledge that unjust dispossession of land in its varied concepts is among the legitimate grievances of the Bangsamoro people, which the peace agreement seeks to address.¹¹⁹

Transitional Justice and Reconciliation Commission

7. **The subsequent annexes to the Framework Agreement on the Bangsamoro did not specifically detail how the land-related issues will be addressed.** However, the Annex on Normalization formed the Transitional Justice and Reconciliation Commission (TJRC) to “address the legitimate grievances of the Bangsamoro people, correct historical injustices and address human rights violations...” Moreover, the one of the principal functions of the TJRC per its Terms of Reference is to conduct consultations, assessments or survey to determine the legitimate grievances of the Bangsamoro people including those arising from unjust dispossession of land. Chaired by representatives of the Swiss Government, the TJRC also includes one commissioner each nominated by the GPH and the MILF respectively.
8. The Terms of Reference for the TJRC clarify that its main function is to undertake a study and produce a set of recommendations on the appropriate mechanisms to address legitimate grievances of the Bangsamoro people, correct historical injustices and address human rights violations and marginalization through land dispossession, towards healing and reconciliation.

118 Restoring rights will unquestionably be difficult. The decades since the colonial eras have seen the private titling of much land in, and adjacent to, ARMM. As far back as 1990, a benchmark survey conducted by the former Institute of Agrarian Studies, University of the Philippines, Los Banos found that, in the provinces of Lanao del Sur and Maguindanao (in ARMM) and in neighbouring Lanao del Norte, Sultan Kudarat and North Cotabato, dominant tenurial arrangements included share tenancy, leasehold and owner-cultivator.

119 “Vested property rights shall be recognized and respected. With respect to the legitimate grievances of the Bangsamoro people arising from any unjust dispossession of their territorial and proprietary rights, customary land tenure or their marginalization shall be acknowledged. Whenever restoration is no longer possible, the Central Government and the Government of the Bangsamoro shall take effective measures for adequate reparation collectively beneficial to the Bangsamoro people in such quality, quantity and status to be determined mutually.” (Framework Agreement on the Bangsamoro)

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9. The TJRC will fulfil this mandate through the following means:
 - a. Consultations, assessments or surveys to determine legitimate grievances, including those arising from unjust dispossession of land
 - b. Survey possible remedies
 - c. Consult local and international experts
 - d. Study local and international best practices on transitional justice
 - e. Recommend immediate and longer-term interventions to address the findings of their study and provide measures to address the causes of conflict and prevent the recurrence of the violations
 - f. Propose comprehensive public policy recommendation to the government
 - g. Identify other aspects of transitional justice and reconciliation relevant to the TJRC mandate
10. The TJRC has developed its own conceptual approach regarding Dealing with the Past and Conflict transformation that informs each and all of its activities. In the context of land issue, the TJRC is convinced that the cooperation with IOM/WB could become an added value based on a joint approach ensuring a proper balance between
 - a “technical” approach, policies and measures to address the land issues and its legacy in the Bangsamoro context; and
 - a victim, conflict transformation sensitive approach; namely the acknowledgment of the root of the conflict and the violations endured and the design of a holistic approach combining truth, justice, reparations and the development of prevention of recurrence policy and mechanism
11. **The TJRC has set up four “study groups” to address different elements of their mandate, including on unjust dispossession of land.** With the support of the study groups and civil society partners, the Commission will conduct extensive consultations with different groups across Mindanao. The Commission is also reaching out to some international organizations to help collect and analyze data to support the formulation of their study.

WB-IOM Partnership on Land Conflict in Mindanao

12. A joint IOM-World Bank team conducted a scoping mission on Land Conflict in Mindanao in 2013. Responding to a request from the Office of the Presidential Adviser on the Peace Process, the mission identified a basic typology of land issues and also explored community dynamics in the aftermath of the signing of the Framework Agreement on the Bangsamoro.
13. Key findings of the report were as follows:
 - The signing of the FAB has created new dynamics that are bringing latent land claims to the fore. Uncertainty about how the FAB land provisions will be applied adds to a fluid situation
 - Significant difference in land conflict typology and dynamics from community to community will require a multilayered policy response (one size fits all unlikely to succeed)
 - Competing land claims are related to historical grievances; inadequate and/or failed land reform policies (elite capture); and overlapping mandates of land management authorities

- Land management institutions struggle with limited capacity; appear all too often open to elite capture; and are insufficiently resourced to withstand the politicization of land conflicts
- Land tenure information is incomplete and, when it exists, often questionable to the point that it is impossible to know how much land is titled correctly and how many competing land claims exist
- Existing land dispute resolution mechanisms are stretched to deal with ordinary land disputes and cannot address land conflicts in absence of FAB details, but successful instances of mediation exist

14. The mission also outlined requirements to deliver the FAB commitments as follows:

- Reconciliation and trust-building
- Participatory policymaking (all communities)
- Adequate symbolic and material remedies
- Fair and impartial implementation (governance)
- Investment management (peace dividend)
- Vision for socio-economic future
- Rapid action, quick results, expectation management

15. The report also laid out a series of short- and medium-term recommendations for follow up policy and analytical work, including:

- Obtain empirical data on land claims, disputes and conflict prevalence as top priority
- Conduct intention survey amongst population displaced by past conflict cycles and establish population mobility monitoring mechanism
- Assess the resilience and capacity of existing land dispute resolution mechanisms, including local land conflict mediation initiatives
- Make inventory of current land-related laws, including institutional mapping of land-related government agencies
- Pending the outcome of the land dispute resolution mechanism assessment, provide mediation capacity building to the relevant local actors in areas with a high conflict potential and/or a high number of land disputes and conflict
- Accompany the resolution of land conflicts with the design and implementation of robust community stabilization programs aimed at trust building and the reinforcement of local government through improved basic service delivery

16. Follow up on these recommendations has been on hold, pending clarification from the GPH and MILF on how land-related commitments in the FAB will be handled. With the establishment of the TJRC, this is now clear.

17. Following a series of discussions between the TJRC and representatives of the IOM and World Bank, the TJRC has requested IOM and World Bank, to support the TJRC in the implementation of its mandate in relation with the land issue.

Marginalization through Land Dispossession: Program Description

18. The WB/IOM program covers the following elements:
 - Support to the TJRC Land Study Group's (SG) Rapporteur to complete the SG Report
 - A review of the History and Impact of Land Dispossession
 - Mapping of Existing Programs on Land Conflict in Mindanao
 - Recommendations on Land Reparation
19. Two more future-oriented additional initiatives shall also be conducted:
 - Feasibility Study of a potential local solution oriented process: the Case of Wao, Lanao del Sur
 - Future-oriented private Sector Forums on Land and development Issues
20. Given the sensitivity of this work and the ethnic and religious dimensions of land conflict and dispossession in Mindanao, the work will be conducted in a highly inclusive manner. The strategy for social inclusion is as follows: (i) the TJRC Land Study Group includes key members of civil society from the NGO and academic communities; (ii) the work will be complemented by a comprehensive "listening process" led by the TJRC that includes hundreds of communities covering a diverse range of ethnic and religious groups; and (iii) once the draft TJRC report is prepared, it will be validated again with a broad cross-section of stakeholders to ensure inclusivity.

Support for the Rapporteur of the TJRC Land Study Group

21. Provide technical support to the Rapporteur of the TJRC Land Study Group. This includes, among others, the following functions:
 - I. Support to the Rapporteur to complete their mandate, including:
 - Produce survey(s) of literature
 - Facilitate discussions, elaboration of findings, recommendations
 - Ensure a gender sensitive methodology
 - Draft and consolidate the SG report
 - II. Contribute to the development and identification of concepts, meanings, and identities associated with the "land" issue for settlers, Moros and indigenous people
 - Modalities, impact of land dispossession and historical timeline
 - Rationale and interest behind land dispossession and repeated cycles of displacement or dispossession as a result of the conflict
 - Triggers and their consequences
 - Specific war related land issues, targets, goals and impact

III. Contribute to the Study Group research and review of history, identifying key events and the impact of Land Dispossession

- Summarize existing literature to explain how land dispossession has occurred in the proposed Bangsamoro territories, and what the effects of dispossession have been on marginalization of some community members.
- Document the various triggers for dispossession, identifying laws and regulations, policies and programs that have caused dispossession dating back to 1898. This will explore and describe existing concepts on land from the Bangsamoro and Lumad perspective.
- Analyze the impact of more recent causes of dispossession, including widespread displacement as a result of armed conflict and land-grabbing practices perpetrated by powerful interests in conflict-affected areas of Mindanao.
- Assess the effect of marginalization from a socio-economic, cultural and political perspective on those who had been unjustly dispossessed of their land covering all communities in the Bangsamoro, regardless of ethnicity or religious affiliation.
- Realize a stakeholder analysis to map out the key players who are engaged in dispossession of land and who can play a role in helping to address its effects, by undertaking a combination of a literature review and – in light of the highly localized and context-specific nature of land conflicts in the proposed Bangsamoro territory – a series of case studies in communities to be selected with the guidance of the TJRC.

KEY QUESTIONS

- How did land dispossession come about in Mindanao?
- What kind of marginalization(s) has resulted from land dispossession?
- What has been the effect of such dispossession in socio-economic, political and cultural terms?
- Who are the actors and key institutions (government and non-government) involved in either fomenting or resolving land conflict, particularly related to unjust dispossession?

IV. Map existing policies, programs and initiatives related to land conflict in Mindanao

Identify existing:

- documentation
- recommendations and their implementation or lack thereof
- institutions and agencies mandated to address this issues and analyze their capacities and results so far
- programs on the part of the government and development partners (civil society, universities, and international agencies) in support of land administration and land conflict management, particularly with respect to dispossession of land.
- applicable legal framework, and cross check the patterns of land dispossession and marginalization as a consequence of the lack of implementation of this later legal framework

V. Recommendations on land reparations

On request from the TJRC and/or the GPH and MILF operating independent of the TJRC, through the IOM's Land, Property and Reparations Division, technical advice can be offered to the TJRC and other parties on options

for land reparations, drawing on international experience from a number of different countries.

Such advice could potentially inform TJRC recommendations on institutions and/or processes to be established to provide reparations for unjust dispossession of land, as provided for in the Comprehensive Agreement on the Bangsamoro.

VI. Future-Oriented Activities

Additionally, the TJRC would like to launch two specific initiatives:

- a. **Feasibility Study of a potential local solution oriented process: the Case of Wa-o, Lanao del Sur.** Some locally led initiatives to resolve land conflicts have been emerging in parts of the Autonomous Region in Muslim Mindanao, including in the municipality of Wao in Lanao del Sur. The TJRC will provide an entry point for the selected team to get in touch with the local actors in Wao, Lanao del Sur and assess the feasibility of the emerging solutions. The Feasibility Study will support the realization of an existing solution-oriented process, assess its feasibility and develop it as a possible model for replication.

Additionally the WB-IOM team would offer advice on the legal feasibility of the proposed solutions and would identify a series of land related conflict that need to be addressed and suggest priorities (short, mid and long term).

KEY QUESTIONS:

- Who is involved in the locally-driven initiatives to resolve historical land injustices?
- How did these initiatives come about? Who started? Who facilitated?
- What were the key elements that made this possible?
- What are the key technical elements to take in account
- Who are the main actors to be involved?
- What is the decision-making process?
- Are existing proposed solutions through these initiatives legally feasible? If not how can they be made so?
- Can these initiatives be replicated and, if so, how?

- b. **Private Sector forum on Land Issues.** In coordination with the TJRC, a series of forums will be conducted with actors involved in land issues such as the private sector, the BDC, and other regional and governmental institutions such DENR, DAR, LRA, NCIP and DA. These conversations would be convened by the TJRC and facilitated by the WB-IOM team. This could also potentially include a short survey to be issued to business interests. With the support, if needed, of a professional facilitator using techniques such as “future workshop.” This exercise would convene actors involved in existing initiatives in this respect.

The exercise would be future-oriented; the expected result would be a joint document containing a vision for the future development of the land issue in Bangsamoro, as well as a series of recommendations in accordance with existing norms, standards and best practices, for the private and public sector regarding land policies (including development, market, social, ecological aspects, mining, fishing, utilization of natural and living resources in the land, traditional and cultural rights to land use, etc.) and the development of views on the causes of land conflict and dispossession. It would also offer recommendations on approaches to resolve past dispossession to secure a more stable future. The discussions would cover illegal/informal land markets.

This work would be undertaken under the direct guidance and leadership of the TJRC Chair.

VII. Team Composition

A joint, multi-disciplinary team will be established by the IOM and World Bank covering the following skills:

- Land reparations
- Land administration and management
- Land conflict
- History and politics of Mindanao
- Regional planning
- Data management and analysis, including GIS
- Land law and policy in the Philippines

VIII. Duration and Timeline

Work will commence in July 2015. The timeline thereafter will be as follows:

- Mid-August: summary of main issues and recommendations (what, by whom, for whom, expected results), ideally divided up in short, medium and long term.
- late-August: first draft of Land Study Group Report
- Mid-September: second draft of Land Study Group report.
- Mid-late September: outreach to national and local institutions to check the recommendations and see whether they are feasible from their perspective, and what needs to be changed to make it operational (part of this is also to create a constituency around the recommendations).
- Early October: final draft of Land Study Group Report.
- Mid-October: Draft of TJRC Report.
- End of October – early November: handover of final TJRC Report.

IX. Working Arrangements

The joint WB-IOM team will work under the guidance of the TJRC and in line with its legal mandate. The results will be part of the TJRC final report. All the results are property of the TJRC. The expected results are a series of public policy recommendations that shall set the basis for a long term, incremental, sustainable approach to the land issue in cooperation with all concerned actors.

IOM/WB will provide the qualified personnel and will act in close cooperation with the TJRC and its Land Study Group, in line with a Memorandum of Understanding. Coordination will also be established with relevant national government agencies working on land management, the Office of the Presidential Adviser on the Peace Process and the MILF. The team will also reach out to the Bangsamoro Transition Commission, and its “Task Force Mamalu-Tabunaway” on IP-Moro land issues and other organs and mechanisms of the peace process as may be necessary and with guidance from the TJRC.

The institutional arrangements between the TJRC, World Bank and IOM will be defined in a Memorandum of Understanding.

Annex B. Summary of the Partial Results of the Listening Process on “Marginalization through Land Dispossession”

TJRC conducted an exhaustive consultation of stakeholders in various parts of the Bangsamoro region through what it calls “Listening Process.” Its objective is to learn directly from communities their perception on challenges confronting them and their recommended solutions to their problems. Around 3,000 respondents participated in the forums held all over the proposed Bangsamoro Core Territory. A set of questions divided into the four areas of concern of the TJRC (i.e., legitimate grievances, historical injustice, human rights violation, and marginalization through land dispossession) were asked to the participants and the facilitators of the “Listening Process” conscientiously documented the processes and the responses of the participants.

Partial and unofficial results of the “Listening Process” on “Marginalization through Land Dispossession” are summarized in the matrix below but some caveats will have to be noted. First is that it is impossible to fully reflect the richness of the discussions in the various forums in a few pages particularly when summarizing them in matrices form. Thus, there will be a lot of simplifications committed in formulating the matrices. Second, actual cases and sites of land disputes/conflicts were omitted in this presentation but are preserved in the original submission of the TJRC “Listening Process” team. Those who want to see the details have to refer to their original work. And three, the TJRC “Listening Process” team is still in the process of processing and analyzing their data. What was shared were partial results which should be further processed in view of space limitation. Based on the matrix table below, a number of observations can be made: One is that it validates the findings of this report that there is no single narrative on the land dispossession issue. It is not just a Moro and Christian settler dispute but as well as Moro and IP, Christian settler and IP, agribusiness venture and IP or Moro, Moro and Moro, Industrial enterprise and IP, political boundary, etc. disputes. Two, Moro and Christian and IP disputes appear to be the main form of land dispute in Central Mindanao while the island provinces of Basilan, Sulu and Tawi-Tawi experience mostly Moro and Moro land dispute. Three, while there are a number of formal and informal land dispute mechanisms, they are simply overwhelmed by the magnitude of the land dispute problem. And four, most respondents still believe that the national government will have to play the primordial role in resolving land dispute, but they also pin their hope on institutions that will be established once the BBL is passed.

Location: IP Communities

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • Moro and IP (Teduray) dispute. • IP dispute with Christian-owned logging company • Moro datu/leaders and IP dispute • TLADMADC (Teduray, Lembangian Dulangan Manubo Ancestral Domain Claimant) claims over their ancestral land from Moros and Christian settlers. • Boundary conflict between the IPs-Settlers and IP Moros • Government (Philippine Coconut Authority) and IP dispute over lands declared as reservation • MNLF and IP dispute over land claims • IP and Agricultural School • Plantation projects encroached on IP lands • Christians settlers and IP dispute • DAR-VOS encroached on IP lands • TLAs and later, IFMAs granted to rich Christian businessmen though land is claimed by Ips • Land dispossession due to conflict that caused displacement of IPs 	<ul style="list-style-type: none"> • Lumad Development Council Inc, TJG, MPPM, IPDev • Timuay Justice and Governance (TJG) • Teduray and Lembangian Ancestral Domain Claimant (TLADC) • Teduray and Lembangian Women Organization (TLWO) • Self-delineation of ancestral domain thru identification of natural land marks and traditional boundaries 	<ul style="list-style-type: none"> • Terminate or non-renewal of TLAs/IFMAs/Pasture Leases • NCIP/DENR and other line agency • Role of local/regional/national authorities to address the consequences of marginalization thru land dispossession • LGUs – BLGUs and MLGUs to create ordinance regulating the sale of lands. • There has to be a tribal congress of IPs to tackle the issues of ancestral domain claims. • There is a unified claim, the TLADMADC- Teduray, Lembangian at Dulangan Manubo Ancestral Domain Claimant, over 280,000 hectares in Maguindanao • Full inclusion of IP rights in the BBL • NCIP to survey and issue CADT • OSCC to support the delineation and not to oppose

Location: Central Mindanao

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • B'laan (in Columbio) and Christian settler dispute • B'laan and Moro/Christian settlers dispute (in Bacong) • Issuances of overlapping land tenure instruments on the same land • DAR and IP who refused issuance of collective CLOA and preferred CADT • Moro elites have reclaimed land which IP claims to be part of their ancestral domain • Moros and Christian settlers/IP land disputes in Upi; Moros returned claiming back their lands. Some of which are titled to them • Traditional/territorial boundary between Moro and IPs not respected; Moro territory expanding and IP territory shrinking • Christian settler and Moro dispute (in Alamada) • Conflict led to displacement of Moros whose abandoned lands were occupied and titled by Christian occupants because of the armed conflict • VOS scam allegedly perpetrated by a powerful Muslim leader in Maguindanao • Moro and Moro dispute (donated lands by the Moro patriarch but later reclaimed by children) 	<ul style="list-style-type: none"> • Bleye Kukom (indigenous practice House of Justice) which tries to address land boundary conflict • Organizations/individuals addressing the consequences of marginalization thru land dispossession: <ul style="list-style-type: none"> • GiNaPaLaDTaKa Space for Peace) • Immaculate Conception Parish of Pikit • Council of elders in the community • <i>Barangay</i> leaders • Local leaders continue to persist in this work to prevent the recurrence of the 1996 conflict in Bual • Southern Christian College in Midsayap had been a key facilitator in resolving the land issue but until now the conflict is still unresolved 	<ul style="list-style-type: none"> • Implement land reform and then government provide support , subsidize even the marketing – to help preserve land • Prioritize delineation of ancestral domain areas in Columbio (with components on documenting especially history and genealogy, solid organizing) • Recognition and protection of IP's ancestral domains • Creation of an independent body that will resolve, evaluate and monitor land claims as well as the implementation of laws and other policies and agreements • For companies investing in ancestral domain areas of the IP, genuine consultation and involvement/participation of lumads must be ensured; full implementation of FPIC • Government should be responsible in conducting dialogues. Concerned government agencies such as DENR, DAR, and NCIP should go down to the communities to support dialogue on land conflict issues • MILF, CHR and DILG establish mechanism to discuss the land issues and concerns of Moros in affected areas (e.g. Macabenban in the boundary of North Cotabato and Bukidnon)

Location: Central Mindanao (continued from last page)

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • Overlapping land titles/instruments for the same piece of land. • Moros believe that lands that were taken away from them can be automatically reclaimed once BBL is passed and the Bangsamoro Government established. • Land issues/tensions usually emerge during harvest time. Groups that are claiming the area assert their demand by harvesting the produce of farmers occupying the contested area. • Christian settler and IP dispute • The height of displacement happened between 1971-1976. By the time the Muslim families returned, the lands have been occupied by y Christian settlers • Agribusiness corporation and Moro/IP dispute • Increasing number of disputes due to prospective mining sites (Palembang) • <i>Rido</i> in Maganoy/Sharif Aguak (Moro and Moro dispute) 	<ul style="list-style-type: none"> • Rangaban is part of the area declared as a sanctuary of peace (NATULARAN MU – Nabalawag, Tugal, Lower Glad, Rangeban, Nes, Mudseng). The sanctuary of peace is headed by <i>ex-barangay</i> captain Jun Cabara. This sanctuary was a recipient of a Galing Pook Award. Within this sanctuary, community leaders, elders and the concerned families were called to a dialogue. • UNYPAD's conflict resolution initiatives that have settled 3 rido cases in 2008 involving the families of Mangansakan, Sinsuat, Abas, Bagundang, etal. • 4Bs Tribal Council (Biyangan, Buenavida, Buhay, Batasan) in Makilala 	<ul style="list-style-type: none"> • Bureau of Lands (superseded by the Land Management Bureau) should investigate and once and for all, decide on the competing claims; DENR and other agencies should enforce their programs on the ground • Actual occupants should be considered and prioritized in land distribution • Land titles acquired by outsiders should be authenticated (given that there are cases of manufactured documents) • Locate elders in the community who will act as living witnesses of history of land ownership in the communities • For NCIP to continue supporting the tribe to negotiate with the Christians who are occupying lands within the ancestral domain. • Involve DAR, DENR in all levels for actual land surveys to help address land conflicts • Organize a big gathering like a National Summit where all parties will commit to the following: correcting the wrong committed (historical injustcies), take responsibility and accountability for all the wrongdoings; comply with agreements

Location: Lanao Del Sur

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • Land dispossession of Moros by Christian settlers due to conflict • Moro lands declared as military reservation and then transformed into cassava plantation • Moro elite appropriated lands of ordinary Moros • Cement company and IP dispute • Cassava company hired more Christian workers further displacing Moros. • Moros cannot title their land properties because the area is considered as military reservation. • <i>Rido</i>: Moro and Moro dispute • Moro elite were able to claim large land areas for themselves. • Logging area converted to pasture lease: Chrisitan elite and Moro dispute • Political boundary dispute between Iligan Ctiy and the municipality of Tagoloan. 	<ul style="list-style-type: none"> • National Commission on Indigenous Peoples (NCIP) to recognize IP land as ancestral lands (because there is proof of it). • EcoWEB and CAFOD, they are helping us in asserting our rights, they provide us with livelihood support. • Best practice is the employment of <i>Ijma</i> and <i>Taritib</i> in resolving conflict because the system survived for centuries and it is still effective until today. However, it only addresses the resolution of land conflict between Maranao families. It does not address the issue of marginalization due to land dispossession. 	<ul style="list-style-type: none"> • Government grants an area where IPs can build their houses permanently, just small plots where they could plant some vegetables and access to potable and irrigation water. • The dispossession of lands of the Bangsamoro should be addressed immediately after passage of the BBL. • The traditional mechanisms that addressed <i>rido</i> especially those caused by land disputes should be supported by government • Institutions like the Mindanao State University (MSU) should be given support to conduct studies on how to address the issue of land dispossession among the Bangsamoro which should be submitted to the government as inputs in formulating land policies in the Bangsamoro • Make it a state policy to recognize the customary and traditional ownership of land among the Bangsamoro while at the same time slowly introduce modern land ownership system.

Location: Lanao Del Norte		
Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • Moro and Christian settlers dispute • Land dispossession due to conflict in the 1970s • Ethnic group dispute (Maranao versus Visayan settler) • Political boundary dispute between Iligan City and Balo-i • Moro and IP (Higaunon) dispute • Palm oil plantation and IP dispute • <i>Rido</i>: Moro versus Moro (in Sultan Naga Dipamoro) • Christian landowner versus tenants dispute • Coal fired power plant and Moro (in Kauswagan) • EDCOR settlement site for Christians migrants and Moro (in Sapad) • Cassava plantation and Moro dispute • Powerful Moro clans appropriated vast tracks of land • National Power Corporation (NPC) Hydro Electric Project and Moro dispute 	<ul style="list-style-type: none"> • CSOs like Pakigdait, Ecoweb, DRRAC and Life for Water had initiated several Peace building projects in Delabayan to help Muslim and Christian Residents heal the wounds of their past. • Regular reporting of the EWER monitors to Non-Violent Peace Force. • Non-Violent Peace Force regularly meets the AFP and MILF to emphasize the protection of the civilians. 	<ul style="list-style-type: none"> • Development of the land into a zone of cooperation and/or development zone that will benefit both Muslims and Christians (or even Lumads) • A government agency can be tasked to give financial reparations to those who were dispossessed of their land, if land can no longer be returned to original owners • The participants suggested that the government conduct a cadastral survey to resolve the boundary issue of Iligan and Balo-i. • The corporate law of the Philippines need to be reviewed because it gives a lot of privileges to big companies such as the Coal Power Plant in Kauswagan whose Environmental Clearance Certificate was approved from Manila. • A task force should be created to focus on: 1) determining the truthfulness of the land claims; and 2) determining and adopting approaches that will lead to peaceful and just settlement of the competing claims • Assist in increasing agricultural productivity to help reduce <i>rido</i> incidence • The traditional mechanisms that address <i>rido</i> especially those caused by land disputes should be supported by government.
Location: South Cotabato, General Santos, Saranggani		
Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • 24 has in Tupi were taken over by Christian families and leased to DOLE Phils • Lands left behind when they evacuated during Martial Law are now occupied by settlers. • Christians carried document of ownership of the Muslims land. • IPs used land as payment of debt to Christians (if IPs cannot pay their debts, they were asked to sign a piece of paper). It is said to be promissory note but IPs ended by paying the debt with his land). • Muslims were cheated by some unscrupulous businessmen and signed the document that encumbered their land • T'boli – massive entry of migrants from other provinces in Mindanao • When the military conducted operations during Martial Law, everything was taken and the house were burned. The land was assessed by DENR and the Christians were granted ISF. 	<ul style="list-style-type: none"> • In 2011, the <i>barangay</i> captains requested DAR to survey lands classified as Alienable and Disposable (A & D) lands. It seemed that there was already a signed agreement with NCIP, DAR and DENR. The Mayor of Catumbang who is a geodetic engineer was the contractor chosen to survey • Organized the Mamalu Tabunaway Upland Farmers Association. • KITACO – Kidapawan, Tampakan, Columbio Mayors Alliance and delegated persons that resolve issues on boundary conflict 	<ul style="list-style-type: none"> • Assistance in claiming back the lands • Scholarship program for the children of the victims of conflict and land dispossession • DENR to explain and assist them on how to claim back their lands/that their lands will be returned to them • Recognition of traditional structure and leaders such as Royal Sultanates and IP Chieftains; Strengthen Human Rights Education for citizens • A Land Redemption Program to be undertaken to recover T'boli lands • Programs for job creation and Increase salary of the workers in rural areas • Review and determine the land owned by Moros but now occupied by settlers • Regulate the entry of outside investors to protect the interest of T'boli to explore and use their land

Location: South Cotabato, General Santos, Sarangani (continued from last page)

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • Land owned by an indigenous person is being claimed by another person. • Big companies like STANFILCO (bananas) and DOLE (pineapple) buy lands owned by the indigenous peoples. • Entry of too many outside investors mostly from General Santos City, South Cotabato and Chinese deprived local Tbolis to explore and engage in their own land. • Lake Sebu had no proper zoning as well, the commercial area, housing area and public lands are not properly identified. • IPs are enslaved by settlers especially by the Chinese; we are used as laborer to the land we owned and yet we don't benefit from the fruits of our land • The military is using both Tboli and Christians to fight against the Muslims. if war broke out, we would evacuate so no one remains on the land • After evacuation during the Ilagâ operations, we came back in the <i>barangay</i> but our lands were surveyed and given to the Christians. • A small portion of our property was mortgaged to a rich man but when it was surveyed, the house of the owner was included • There were rich Christians who grabbed IP lands, took advantage of the weakness of the IPs • IPs had CLOAs of their land already. Unfortunately, the settlers got interested and enticed them to allow a company – SUMIFRO to rent their land for 5-25 years and in exchange for roads, health center and school. • The war was purposely done to grab our lands. Some of them have legal documents, especially those who bought the land. 		

Location: Zamboanga

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • Lands claimed by influential and educated families who have access to 'legal procedures' and not being respectful of the ancestral boundaries of the IPs. • A donation of 1,000 hectares of land for the construction of a school building but was later sold. The buyer of the land did not recognize the deed of donation of the land to the community 	<ul style="list-style-type: none"> • In 2010, Mayor Hofer on his 2nd year returned a portion of some lands to some of the owners • A certain Ferraris family gave some parts of the land to some of the Moro families 	<ul style="list-style-type: none"> • Review Land Act 141 because it discriminates against the IPs and Moros • Bureau of Land, DENR and DAR to assist in verifying the data needed by the community and to assist in filing cases against the perpetrators to return the lands to the original owners

Location: Zamboanga (continued from last page)

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • DACON company's non-issuance of land released to Muslims • Land surveyors/assessors rule; no document no right to occupy the land; Moros were uneducated, no land titles issued, only verbal agreement from generation to generation that they own the land. • Displaced due to conflict; a year after their lands were occupied by settlers • There were "NO RETURN ZONE" declared areas because according to the LGU, these areas are disaster prone – storm surge. • Selling of land at low prices; selling the same land twice to different owners by the tenant • Hectares of land owned by the grandparents however, when they died, land was eventually grabbed and owned by the Yakan people • Because of the war in Sibuco, Zamboanga del Norte, they were forced to evacuate and leave their lands against their will. 	<ul style="list-style-type: none"> • Three hectares of land was divided and distributed by Congressman Hofer to the 200 members of the urban poor association 	<ul style="list-style-type: none"> • Settlers tilling the land owned by the Moro should also be compensated for their hard work

Location: Basilan

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • The 15 thousand resettlement areas were abandoned. • Almost all the landholdings in Bato Bato, Akbar Municipality were owned by the Sama Tribe and the Bisaya (Christian). They have landholdings near the mountains because the other tribes forced us to leave the landholdings. • It was only when Gerry Salapuddin returned to the folds of the law that the Yakans started to own land in the Poblacion in Lamitan. • When the settlers from Luzon and Visayas came they manage to have titles for those lands. • A certain Mr. Alano who was a lawyer used groups of Christians and Tausug to get the lands from the Yakan in the Lantawan Area • MARBEDCO in Mangal, Sumisip, Basilan took away the land of the people from Sumisip (Insang, Tadjae) and turned into rubber plantation, i.e., 3,000 hectares of land in exchange for groceries and loans) • A big tract of land in our <i>barangay</i> in Calangcanas, Maluso was grabbed by a Chinese by the name of Mr. Eustaquio Tan. The land is about 800 hectares (not covered by DAR) 	<ul style="list-style-type: none"> • An inventory of disputes in the different municipalities in Basilan • The initiative of the organization to enter into compromise Agreement with SCARBIDCI through the arbitration of the DAR-ARMM 	<ul style="list-style-type: none"> • Comprehensive support to agrarian reform cooperatives and strict Implementation of Agrarian reform Law. • Policy of government that will make titling of landholdings easy; requirement should be easy to comply with especially by those who have less in life and less in education. • Review the land titling policies especially the grant award to cooperatives. • Psychosocial Intervention must be part of the government package in terms of programs and projects." • Human rights advocacy • Policy of Compensation to previous and actual landowners.

Location: Basilan (continued from last page)		
Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • “Another landholdings in Lamitan composed of more or less 700 hectares called the Yakan plantation was co-owned by Mr. Robinson and Mr. Enrile • The landholding where the Malamawi beach is located in Isabela City used to be owned by the Tahsin Family. A member of the Tahsin Family borrowed the sum of P 10,000.00 for his pilgrimage to Mecca. When he returned from Saudi Arabia, his landholding was already titled by the Alano family 		
Location: Sulu		
Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • 60% of land in downtown Jolo belongs to the parish church. • Locals were forced to sell their land to politicians to avoid conflict while some politicians are grabbing the lands • Natives don’t usually register their land and some politicians took advantage of the ignorance of the natives and registered the land under their names • The establishment of military camp in their private lands without any compensation • Certain political leaders claimed the islet name PUH TOUNG TOUNG • The inhabitants of Puh Tiyumawal island were forcibly evicted. • Loss of their lands due to family conflicts. • Lands were given through pusakah “inheritance”. Titling is not being practiced in far-flung areas • Grabbing of inheritance by siblings and other relatives 	<ul style="list-style-type: none"> • No agencies from the national government develop initiatives to address marginalization except their local leaders 	<ul style="list-style-type: none"> • Awareness-raising on the land rights processed involved in claiming back their lands • Reparations of the land loss or reintegration of the original owners of their land • Create a National Commission to address land marginalization in the Bangsamoro area. • Reintegration’s of original owners to their land, if not possible, compensation should be made.

Location: Tawi-Tawi		
Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • Many returned after displacement during Martial Law, and found out that their land was already owned by some individual who got connection from the Bureau of Land. • Double issuance of the land title by the Bureau of Land • Many suffered from CARP. You offer your land to individuals who had no land to build their house, then after 15 years they can claim it and owned it. • Sand quarrying here in our place goes unabated; mining in mainland Tawi-Tawi is increasing • Accordingly, the land was utilized for mining activity by the Matba family. This land was originally owned by the Tulawie family of Sulu. Since this was now used for mining, the original owner is now claiming the land, resulting in dispute • Quarrying in Mapun is rampant. On illegal logging, it is the harvesting of “Tungug” (Tan Bark) in Mapun which is frequently visited by Palawenos with Jama Mapuns as their harvesters and workers. It is now operated by the LGUs. Ships from Tacloban regularly visit Mapun for this kind of business. • Seeling or buying of lands is not legal that lead to land dispossession. • Conflict has caused the Sama Dilaut to flee from their original domains in Belatan and Bona'bona'an islands. They fled to Sabah, others fled north to Bongao. • Tausug and Bisaya have been welcomed ever since to build their homes here in Simunul and Tawi-Tawi. However, some of them abuse our hospitality and instead bring violence and ‘sasaw’ (conflict) into our land • Table survey were conducted by the Bureau of Land identifying and certifying lands as public lands and hence, disposable. • Peasants who used to own lands but found out that their private properties were already titled and classified as public lands and later sold and possessed by other people • Sitangkay – the pondohan in Sitangkay have been taken over by the Tausug and the Sama Dilaut and Sama Sitangkay have become marginalized. • After the war, there was nothing left for us to return to. Especially like myself, I am a woman and there was no one earning a living for me. I have to survive with my children single-handedly. As a woman, owning a land and defending it is difficult • Our place was looted until we were forced to flee from our “pondohan”; later other ethnic occupied our agal-agal pondohan. 	<ul style="list-style-type: none"> • In some areas, the <i>barangay</i> captain sought the assistance of the Philippine Armed Forces or PNP for escort and peace keeping. • The local government official like the Mayor or the Governor mediate the conflict 	<ul style="list-style-type: none"> • Bureau of Land to take action to address complaints on double issuance of same land title to two different individuals that results in land dispute • A place for the Sama Dilaut through the issuance of CADT or any form of land ownership that is legal and recognized by government. • Rehabilitation in Mapun due to environmental devastation/destruction of the place. • A policy addressing the political dynasty • Separation of Tawi-Tawi from ARMM • Revisit the land titles and invalidate those that were spuriously acquired from the porol lahat (original inhabitants). • A massive and comprehensive program for return and resettlement and reintegration of all those affected by conflict • We resented that we are not properly given due respect and recognition even only for the sake of our dignity, for all the efforts that we have given before for the sake of the struggle • For us women who joined the struggle, we should be given livelihood projects, educational opportunities, source of income and a way we can live decently. • A passport system which recognized the traditional free entry “borderless” and open access to Sabah and free trading

Location: Across all areas where there are MILF Camps

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • Settler illegally grabbed our lands by deceiving our leaders (Sultans and Datus). Around 4,300 hectares of Moro lands illegally occupied by Lorenzo plantation, Puracan Company, and Hoffer plantation. Atty. Althea applied titles to land belonging to the Sultan of Balabagan and later transferred Lobregat, Puracan, and Hoffer. Lorenzo security personnel killed more than 70 Moro people passing Lorenzo compound (originally, land/coconut plantation of the Sultan of Balagan now occupied by Jomar Lobregat by force) •Grant of concessions to logging companies such as Sarmiento and Consunji •Resettlement of Christian settlers through EDCOR. •Barangay Pikinit, SND, 242 hectares land of Abidin Sarip was occupied by Boy Cabahog, Barangay Dangulan, a 12 hectare land of a Maranao Moro was occupied by a settler and instead of returning it to the owner sold it to another Maranao •Land grabbing of Moro lands (Buayan was owned by Datu Undas Mamalumpong and Adtog Buday; Dadiangas or Labangal was owned by Hadji Mohammad Simpai; areas of Makar to Tambler was owned by Datu Harid of Gyusu Aasikin; Bulaong was owned by Makagkalat Guiamalon; Malapatan was owned by Bahsuan, brother of Gyusu Aasikin; Glan was owned by Balindong Karamat, also known as Sultan Tahiruddin Malinog who was a son of Barahaman of Maguindanao. •More than 90 hectares owned by Datu Sinsuat Benito was occupied by more than 40 families of settlers who were backed up by Mayor Jaime Aresalite •Occupation by Lopez family of Moro lands •Settlers lent plates, salt, sugar and rice to Tedurays. When Tedurays cannot pay them back, the settlers took the land of Tedurays. • In Libungan Toretta, Pigkawayan, Cotabato more than 10 hectares land of Hadji Kedza Sacandal was illegally occupied by Ilonggo. Vice-Mayor Eddie Cabaya with his men occupied 5 hectares of land owned by Mr. Nangle • In Davao: 1930s – 134 hectares land of Datu Samparo and Datu Lagilis occupied by Tagbanwa was converted into a banana plantation and was titled under Jacob Hudson and later donated to Brokenshire Hospital. Taumo have 134 hectares which is now called Talomo, Davao City. He lent 30 hectares to Datu Lari. In 1970 Hilario Calinie claimed the land. He bribed the community to leave the area and then established a subdivision called Central Park, Talomo Davao City 	<ul style="list-style-type: none"> •Resettlement program of Office of the Muslim Affairs (OMA) but it was not sustained due to financial constraints. • Regional Reconciliation Commission-ARMM took initiatives on land issues but they are focused on land conflict between Moro and Moro. • Program of MILF political committee on settling of land disputes. • DENR efforts in determining political boundaries that caused disputes among neighboring municipalities. 	<ul style="list-style-type: none"> • Government should review military reservations. All traditional lands of Moro that are being used as military reservations should be returned back to the original Moro owners • Sarmiento and Consunji logging companies should be held accountable for occupying our lands illegally and cutting of trees thereof. • Passage of a law repealing all laws which are detrimental/prejudicial to the Moro and the native Teduray • Passage of a law supporting local industry • Local courts should also respect and acknowledge documents that claimants/institutions would produce to address land disputes in the region. • There should be special resettlement program for Moro people • Government should enhance its livelihood support program • Bangsamoro government should have power to legislate appropriate land laws for Moro people. • Resettlement program/policy for Moro people and revisit land acquisition of big plantations of companies and corporations

Location: Across all areas where there are MILF Camps (continued from last page)

Typologies/Land Dispossession Issues Articulated by respondents	Existing Land Dispute Mechanism	Recommended Solution from Community
<ul style="list-style-type: none"> • The whole area of Sta. Cruz Darong and Sirawan are originally owned by the Kagan ethnic group. San Miguel Corporation and Caltex came in and occupied the lands. • They were brought by a government company, i.e., the National Development Company. Said company occupied strategic areas in South Cotabato particularly in Surallah, Marbel, Norallah, Banga and Sto. Nino. They spread all over the Allah Valley. In the early stage, they live under the Datu's tutelage. However, when they already outnumbered the Moros they attacked the Moro communities. When the Moro left their lands, they occupied it and obtained land titles to them. • Occupation of vast areas of land by church denomination such as Oblates of Mary Immaculate in Tamontaka, Oblates of Notre Dame also in Cotabato City and Archdiocese of Cotabato in Sultan Kudarat • Granting concessions to big time capitalists to operate (logging, mining and plantation) in Kalamansig, Ninoy Aquino and Lebak (Sta. Clara, Consunji, Nestle etc) • When Sta. Clara logging company brought the settlers as its laborers, these workers occupied the area where they could cut trees and cultivate the same. They spread all over the area of Salaman, the former name of the undivided Lebak and Kalamansig. • Land laws from the American period deprived Moros of land titles. Christians are allowed to apply for 24 hectares while Moros are only allowed 4 hectares • 64 hectares of land originally owned by Lampi Dakat and now occupied by settlers in Mandulog • 88 hectares of Moro land were occupied by the Ilagâ in sitio Lamalama, Barangay Mangga, Kolambugan. • The Ilagâ started their attacks against Moro communities in Zamboanga Sibugay at Bacalan, Ipil. They were headed by Commanders Verras of sitio Sulitan, Sta. Clara, Naga, Thata and Inday who were all from Manobo, Naga. They were all workers of the Sta. Clara logging company that operated in the Peninsula. • Grabbing of our lands either by companies and private capitalists • When Misamis Lumber Company ceased to operate; it leased all lands it occupied to David Consunji Company (Dacon company). Dacon deployed its personnel in those areas and later on distributed the same land to the settlers. 		

Annex C. Key Informants and FGD Participants

Name	Designation	Organization
KII		
(Prof) Reydan Lacson	Independent Researcher and Anthropologist	NDU/IAG
(Major) Carlos Sol	Head of Secretariat	GPH-CCCH
(Col) Dickson Hermoso	Inspector General, 6 Infantry Division	Philippine Army
(Prof.) Rufa C. Guiam	Director, Mindanao Peace Center	MSU – Gen. San
(Dr.) Anwar Saluwang	Executive Director	UNYPAD Inc.
(Mr) Samsodin Amella	Executive Director	MAPAD Inc.
(Dir) Fatima Kanakan	Executive Director	OSCC – ARMM
Datu Abdelwin Sangkula	Assistant Secretary for Political Affairs	DILG– ARMM
Asec. Sharifah Pearlsa Ali - Dans	Assistant Secretary	DILG – ARMM
(Mr) Ismael Maulana	Chairman	RRUC – ARMM
(Sh.C) Narumbai D. Datukon	Clerk of Court	Shariah District Court
(Prof) Abhoud Syed Lingga	Executive Director	IBS
(Sec.) Amihilda Sangcopan	Regional Secretary	DAR – ARMM
(Atty) Renato Magno	Head Legal Division	DAR – ARMM
(For.) Kahal Kedtag	Regional Secretary	DENR – ARMM
(Atty.) Badrudin Pacasem	Director – Land Management Bureau	DENR – ARMM
(Dir.) Ismael Mabaning	Director – Forest Management Bureau	DENR – ARMM
(Engr.) Nasrudin Tapodoc	Chief - Technical Division, LMB	DENR-ARMM
(Prof.) Norma Gomez	Researcher/Writer (<i>rido</i> cases)	NDU
(Mr) Yamashita Mangacop	Deputy Chair	MTFRU
(Mr) Abdunasser Malingco	Admin Officer	MTFRU
(Mr) Edwardson De Fiesta	Monitoring and Evaluation Officer	MTFRU
(Dr) Badrudin Abdul	Professor/Researcher	MSU Maguindanao
(Atty) Raissa Jajurie	Commissioner	BTC
Uz. Abdulsalam Alabat	Shariah Expert/Practitioner	BLMI / MILF Shadow Shariah Court
Hon. Datukaka Camsa	Presiding Judge	Shariah Circuit Court
Bai Cabayan Bacar	Provl Agrarian Reform Officer	DAR - Maguindanao
Atty Ranibai Dilangalen	Public Attorney III – OIC	PAO Maguindanao
Ms. Myra Medina		CRS
Mr. Quraish Langcap		CBCS

Mr. Kutin Kanim		KFI
Mr. Mohammad Omar		CBCS
Mr. Paul Cagara	MPDC	LGU - Upi
Hon. Bainon Karon	(Former Regional Vice Governor/DSWD ARMM Secretary)	
Hon. Froilyn Mendoza	Commissioner	BTC
Mr. Romy Saliga		BTC
Atty. Nerisa Dalig	Legal Officer	DAF – ARMM
Danilo Muyco	OIC - CENRO	DENR XII
FGD		
Mr. Datuan Magon		UNYPAD
Mr. Yamashita Mangacop		MTFRU
Mr. Abdunasser Malingco		MTFRU
Mr. Alvin Chester Tan		MTFRU
Mr. Faisal Ungkakay	Registrar of Deeds	ROD
Ms. Noraida Chio	Senior Programme Officer	TAF
Mr. Abdulkarim Sangki	Municipal Administrator	LGU Ampatuan
Mr. Quinco Exequiel		LGU Ampatuan
Ms. Sadia Amolan		LGU Ampatuan
Mr. Jose Banaga	MPDC	LGU Ampatuan
Ms Aimee Sambolawan	SB Secretary	LGU Ampatuan
Mr. Karan Ebrahim	Municipal Assessor	LGU Ampatuan
Mr. Esmael Sanduyugan		BLGU Ampatuan
Mr. Haide Ebagat		BLGU Ampatuan
Mr. Arcelie Bolanon		BLGU Ampatuan
Ms. Samera Salilama		BLGU Ampatuan
Mr. Paul Cagara	MPDC	LGU Upi
Mr. Dominador Mandi		LGU Upi
Mr. Nestor Tiban		LGU Upi
Ms. Justina Usob		LGU Upi
Mr. Orlando Agustin Jr		LGU Upi
Mr. Ahmad Mamalangkak		LGU Upi
Mr. Esmael Haron		LGU Upi

Annex D. Chronology of Key Legislation and Policies that Impacted on Land Rights and Land Ownership in Mindanao during the American Colonial Period up to the Aquino Administration

Laws/policies	Year	Stipulation	Impact
The First Wave: 1898 up to the Commonwealth period			
Kiram-Bates Treaty	20 August 1898	Treaty provided that the Sultan of Sulu acknowledged the sovereignty of the United States over Sulu and its dependencies, while the latter committed not to interfere with the internal affairs of the Sultanate.	Enabled the US to focus on its “pacification” campaign against Filipino rebels in the northern islands of the country without worrying about a rearguard armed opposition from the Muslims in the south.
	10 December 1898	Sale of the Philippines, Puerto Rico, Guam and Cuba by Spain to the United States	Annexed Mindanao to the Philippines
Treaty of Paris	30 October 1899	Creation of the US Military District of Mindanao, Jolo and Palawan (Paragua)	Separate governance structure for the southern islands
	2 October 1901	Established the Bureau of Non-Christian Tribes (BNCT).	This bureau was to conduct ethnographic studies of “Mohammedans” and “pagans” of the Philippines, thus enshrining in governance the categorization of Muslims and indigenous peoples as separate from the mainstream.
Act No. 253 of the Philippine Commission under Governor General William Taft		The Department of Mindanao was created as one department of the US Army.	Mindanao treated as separate from the rest of Philippine archipelago
	1 October 1902	Most of the territories accepted as belonging to the Philippines under the 1898 Treaty of Paris were reverted to civil government and local civilian control under the American governor- general, by fiat of the Philippine Commission – with the notable exceptions of “Moro” and “pagan” or “non-Christian” areas of Mindanao and Sulu.	Pastor-Roces notes that province of Batangas was also placed under Martial Law during this period.
Land Registration Act (Act No.496)	November 1902	Required the registration of lands occupied by private individuals and corporations, introducing the Torrens Title system to the Philippines. It created the Court of Land Registration and the Register of Deeds. It limited land acquisition to only three titles. It also stipulated that all applications for registration of land title shall be in writing, and signed and sworn by the applicant.	Since most Moros and IPs are illiterate, they were automatically made ineligible to own lands by this Act. This law affirmed the Regalian doctrine of land ownership and shifted land ownership to individuals or corporations through the Torrens title system
Act No. 718 passed by the Philippine Commission	April 1903	Declared null and void land grants awarded by the Moro sultans, datus, or chiefs of non-Christian tribes when made without government authority or consent.	This Act effectively assigned sole power to grant land titles to the central government and ensured operations of the Regalian doctrine of land ownership.

Laws/policies	Year	Stipulation	Impact
The First Wave: 1898 up to the Commonwealth period			
Philippine Commission Act No. 787	June 1903, until 1914	Created the Moro Province, which divided Mindanao into five politico-military districts: Davao, Cotabato, Lanao, Sulu, and Zamboanga. Each district was divided into municipalities and "tribal wards", in parallel to its equally militarized counterpart in Luzon, the Mountain Province.	
Public Land Act No. 926	October 1903	Declared as public (government) lands all lands not registered under Act No. 496 of 1902. Public lands could only be disposed in three ways: by homestead, purchase (by individual or corporation), and lease. For homestead lands, land ceiling was pegged at 16 has; for purchased land 16 has. for individuals and 1,024 has. for corporations. For leased land, land ceiling was pegged to 1,024 has. both for individuals and corporations	This law was inspired by the Homestead Act of 1862 in the US to encourage white settlers to own and develop lands in the country's sparsely populated Western frontier at the expense of native American inhabitants. It had the same effect in Mindanao.
Mining Law	1905	Provided that all public lands in the Philippines are free, open for exploration, occupation and purchase by citizens of the Philippines and the US	Allowed mining operations in the country and since the sector is capital-intensive, only those who had the funds could venture to this activity while in the process depriving natives ownership of lands that they occupy prior to mining operations
	1906	Founding of the Ohta Development Company, a Japanese abaca concern, in Davao.	Started the development of the abaca industry in Davao, which became an enclave of Japanese business interest
Cadastral Act	1907	Facilitated awarding of land titles to claimants. Institutionalization of Torrens title system of land ownership	Formally deprived Moros and IPs of ownership over the lands they occupy because of illiteracy and lack of knowledge of the bureaucratic process of claiming lands
	1910	An American initiative, the first rubber plantation was established in the Philippines, on Basilan Island, homeland of the Islamicized Yakan speaking people. Four years later, in 1914, the owner of this Basilan Rubber Plantation sold it to J. M. Menzi, who then established the first commercial rubber plantation over vast tracts in Lamitan and Isabela towns of this island province. American "pacification" in Basilan involved the introduction of large-scale rubber and copra (coconut) concerns. Earlier, in 1900, Menzi founded the Manila Daily Bulletin, originally as a shipping journal. The word "pacification" was widely used by the American colonial government, and applied to military and non-military means for conquest.	By this year, of the ninety seven major plantations of one hundred hectares or more, sixty one were owned by Americans, nineteen by Europeans, five by Chinese and twelve by Christian and Muslim Filipinos.
Act No. 2254 of 1913 by the Philippine Commission: Another Public Land Act was passed to amend certain provisions of the original Act	1913	Provided for the creation of "agricultural colonies" in Cotabato and Lanao and the funds thereof to boost rice production starting in 1912; Cash subsidies for transportation, subsistence and livelihood start-ups were provided to encourage settlers from Visayas and Luzon	Colonies were established in Pikit, Silik, Paidu-Pulangui, Glan, and Talitay (Cotabato) More than 15,000 has of land were occupied by the Christian settlers (Pelzer 1945).

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Laws/policies	Year	Stipulation	Impact
The First Wave: 1898 up to the Commonwealth period			
Philippine Commission Act No. 2408	23 July 1914	Created the Department of Mindanao and Sulu, which replaced the Moro Province with a civil government. It covered seven provinces: Zamboanga, Jolo, Cotabato, Davao, Surigao, Agusan, and Bukidnon. This excluded the provinces of Misamis and Surigao and the islands of Palawan and Balabac. Its capital was at Zamboanga.	Under Carpenter's management, a so-called Policy of Attraction was pursued among Muslims. Carpenter articulated his mission thus: "...the aim is the amalgamation of the Mohammedan and Christian native population into a homogeneous Filipino people."
Organic Act No. 2408	1 September 1914	It created the new provinces of Zamboanga, Jolo (Sulu), Cotabato, Davao, and Lanao. Bukidnon was declared a "sub-province".	
Commonwealth Act No. 2280	1914	Created the Momungan (Balo-i) agricultural colony in Lanao	
	13 March 1915	Governor Carpenter and Sulu Sultan Jamal-ul Kiram II signed a Memorandum of Agreement. Through this instrument, the sultan recognized the US sovereignty in the Sulu Archipelago with "all the attributes of sovereign government that are exercised elsewhere in American territory and dependencies." The sultan in effect abdicated all his powers including his prerogatives associated with the courts and collection of taxes while the US recognized the sultan as the "titular spiritual head of the Mohammedan church in the Sulu Archipelago;" and that the Moros "shall have the same religious freedom . . . and the practice of which is not in violation of the basic principles of the laws of the United States of America."	In the hindsight view of some scholars, the Agreement was flawed owing to mistranslation across the languages used.
	1916	The five Legislative Districts of Mindanao and Sulu were designated as Agusan, Bukidnon, Cotabato, Davao, Lanao, Zamboanga and Sulu.	
Philippine Autonomy Act (Jones Law, 39 Stat. 545, c. 416) enacted by US Congress	29 August 1916	Created a fully elected Philippine Legislature. The Department of Mindanao and Sulu was abolished, and its functions subsumed under the Bureau of Non-Christian Tribes.	Mindanao now under the direct control of Manila.
Act No. 2711	10 March 1917	Formally divided the Philippines into provinces, which in turn contained municipalities and/or municipal districts, and the cities of Baguio and Manila. For the Department of Mindanao and Sulu, this included Agusan, Bukidnon, Cotabato, Davao, Lanao, Sulu, and Zamboanga.	
Philippine Commission Act No. 2722	16 May 1917	Provided for usufruct use by the Sultan of Sulu of 4,096 hectares of public land in Sulu, to be reserved by the Governor General. The other members of the Sultan's family entitled to this use were "his direct heirs Datu Rajamuda Muhallil Wasit, Dayang Dayang Hadji Piandau, and Putli Tarhata Atik." The usufruct use was not subject to taxation; however the lands may not be alienated, i.e. transferred to any other.	
Act No. 2874	1919	Raised the hectareage ceiling for homestead lands from 16 to 24 has. However, this ceiling only applied to Christian Filipinos and US citizens. For Moros and IPs, the ceiling was pegged at 10 has only. Moreover, ceiling for public land acquired through purchase by an individual was raised from 16 to 100 has while retaining the 1,024 has for corporations.	Ensured that Christian Filipinos and US citizens would have greater land holdings than Moros and IPs

Laws/policies	Year	Stipulation	Impact
The First Wave: 1898 up to the Commonwealth period			
	1919	The National Development Corporation (NDC) was established and given the task of land acquisition and promotion of corporate investments.	Facilitated public-private partnership in the development lands in Mindanao for plantation agriculture
	1919	The American agricultural corporation BF Goodrich started operations in Mindanao by felling forests to plant to rubber.	The momentum of land conversion from forests to plantations picked up speed from this period.
Commonwealth Act No. 2206		Creation of the US Military District of Mindanao, Jolo and Palawan (Paragua)	Separate governance structure for the southern islands
1919		Creation of the US Military District of Mindanao, Jolo and Palawan (Paragua)	Separate governance structure for the southern islands
Authorized provincial boards to manage colonies	Additional colonies were established: Lamitan in Basilan (under Zamboanga province then); Tawi-Tawi (under Sulu province); Marilog (Bukidnon); and Salunayan and Maganoy (Cotabato)	Creation of the US Military District of Mindanao, Jolo and Palawan (Paragua)	Separate governance structure for the southern islands
	1919-1930	Starting in 1919, the Inter-island Migration Division (IMD) of the Bureau of Labor encouraged waves of Christian resettlements of Mindanao through the extension of a plethora of incentives. It also encouraged convergence of new settlers nearby existing plantations for easier access to supply of labor	Opened Kapalong, Guiangga, Tagum, <i>Lupon</i> and Baganga in Davao; Labangan in Zamboanga and Lamitan in Basilan; Cabadbaran, Butuan and Buenavista in Agusan; Momungan and Kapatagan valley in Lanao. It brought in more settlers to Pikit and Pagalungan
Philippine Legislature Act No. 2878	5 February 1920	The Bureau of Non Christian Tribes replaced the Department of Mindanao and Sulu	
Act No. 3129	1925	Raised the hectarage ceiling of public lands purchased by an individual to 144 has, while retaining ceiling for corporations, and the hectarage ceiling for leases that could be availed of by both private individuals and corporations	
	1926	Philippine Packing Corporation (PhilPak - Del Monte) started a pineapple plantation in Bukidnon. Goodyear and Firestone set up rubber plantations in Zamboanga Sibugay and Sultan Kudarat, respectively.	
Commonwealth Period (1935-1945)			
Quirino-Recto Colonization Act (No. 4197)	February 1935	Encouraged more Christian settlements of Mindanao by the construction of roads and conduct of public land surveys prior to establishment of more agricultural colonies	Addressed complaints of early Christian settlers on the lack of roads to transport goods and people, and their inability to have lands titled under the name.

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Laws/policies	Year	Stipulation	Impact
Commonwealth Period (1935-1945)			
1935 Philippine Constitution	1935 (Quezon administration)	Pegged that the hectareage ceiling for individuals and corporations leasing public lands at 1,024 has. Also raised the ceiling for grazing leases to 2,000 has.	Land dispossession of Moros and IPs unequivocally became an official policy of the central government as it was enshrined in the Philippine Constitution
Commonwealth Act No. 141	November 1936	Lowered the hectareage ceiling that could be purchased by an individual under the homestead scheme from 24 to 16 has. However, the allowable hectareage ceiling that could be owned by Moros and IPs under the homestead scheme was reduced from 10 has to 4 has.	Ensured not only land dispossession of the Moros and IPs but also their discrimination to own part of their ancestral lands
	1937	Dole in Polomolok, TADECO (United Fruit) in Davao del Norte	
	1939	Opening of Samar Mining Company (SAMICO) in Compostela Valley	
Act No. 441 of 1939 creating the National Land Settlement Administration (NLSA)	1939 (Abolished in 1950)	Secured funding assistance to encourage more settlements in Mindanao. Assistance were in the form of provision of farmlands and homesites plots, transportation for entire family, subsistence allowance, and credit to purchase building materials for house and farm implements and inputs. Served as a "one-stop shop" of migrant settlers' concerns.	Resettlement areas were opened in Koronadal (Lago, Tupi, Marbel and Polomok), Allah Valleys (Banga, Norallah and Surallah), and Mallig plains in Isabela
The Second Wave: 1946 up to late1960s			
Rice and Corn Production Administration (RCPA)	March 1949 (Quirino administration)	Led to the establishment of settlements in Buluan (Cotabato) and Maramag-Wao (bordering Bukidnon and Lanao) to promote rice and corn production	Rapid migration/resettlement during this period led to decline in the population of Moros and IPs vis-a-vis Christian settlers. Also Cotabato, Lanao and Zamboanga provinces were gerrymandered to accommodate interest of Christian settler politicians who carved out their own territory where they could exercise political control.
Land Settlement Development Corporation (LASEDECO) established, replacing NLSA and RCPA	1950	Took over resettlement areas sponsored under NLSA and RCPA and opened more resettlement areas in Tacurong, Isulan, Bagumbayan, part of Buluan, Sultan sa Barongis and Ampatuan (all in Cotabato)	
EDCOR (Economic Development Corporation)	1951	Managed resettlement assistance to captured and surrendered Huks in the following Mindanao areas: Sapad, Lanao del Norte, Alamada in North Cotabato, and Buldon, Maguindanao	Less than half of the new settlers were actually Huk rebels; most of them were Visayan settlers and relatives of military personnel (active and retired)
National Resettlement and Rehabilitation Administration (Narra) established through RA 1160. Replaced LASEDECO	1954 (Magsaysay administration, abolished in 1964)	Narra resettled thousands of families from Visayas and Luzon to Mindanao from 1954-1963; Settlement sites were in Allah Valley, Cotabato; Bongao-Balimbing, Tawi-Tawi; Carmen, North Cotabato; Columbio-Tulunán, Central Cotabato; Daguman, Cotabato; Koronadal Valley, Cotabato; Maramag-Pangantukan, Bukidnon; Sto Tomas, Davao; and Wao, Lanao del Sur	

Laws/policies	Year	Stipulation	Impact
The Second Wave: 1946 up to late 1960s			
Republic Act No. 1888	1957	The 1954 Kamlon rebellion in Sulu would push an independent Philippine Congress to create a special committee to investigate the "Moro Problem". This resulted into a series of initiatives that sought to culturally and politically integrate the "Moro and pagan tribes", which were lumped into labels such as "national cultural minorities", "non-Christian Filipinos", "cultural communities" (as described in the 1973 Constitution), before later being disaggregated into "indigenous cultural communities", "indigenous peoples", and "Muslim Filipinos" from 1987 onwards. The first of these bodies was the Commission on National Integration (CNI).	While it is argued that the CNI funds were largely misused, it instituted scholarships that allowed future Bangsamoro leaders such as Nur Misuari and Mohagher Iqbal to be educated in Manila. The Mindanao State University was created under RA 1387 four years later, in 1961. The Senate Committee on National minorities would later conduct a survey in 1963. It identified five key problems: land, education, livelihood, health, and transport.
RA 2228	22 May 1959	Separation of Lanao del Norte and Lanao del Sur	
Agricultural Land Reform Code established the Land Authority (LA)	1963 (Macapagal administration)	LA's Bureau of Resettlement accelerated implementation of the resettlement program in Mindanao and other sparsely populated provinces in the country to provide lands for the small and poor farmers, effectively replacing the NARRA. Almost half a million lands were awarded from 1963 to 1975, with almost half of the distributed lands from Cotabato provinces and around 17% in Lanao provinces	
	18 July 1966	South Cotabato carved out from Cotabato, with capital established at Koronadal City.	
Proclamation No. 472	1965	Creation of the Campo Muslim in Rio Hondo, Zamboanga City.	
	1967	Cotabato was divided into two (2) provinces, Cotabato and South Cotabato	Beginnings of gerrymandering
The Third Wave (1970s to mid-1980s)			
Creation of the Department of Agrarian Reform (DAR) through RA 6389	1971 (Marcos administration)	Took over resettlement tasks from previous agencies it replaced under its Bureau of Resettlement	Administered 18 resettlements in 10 Mindanao provinces: Balimbing-Bongao (Tawi-Tawi), Lilo, Salug and Sindangan (Zamboanga del Norte), Maramag, Pangantukan and Kalilangan (Bukidnon), Prosperidad and Talacogon (Agusan del Sur), Sto Tomas, Panabo and Asuncion (Davao del Norte), Sapad, Nunungan and Karomatan (Lanao del Norte), Wao, Lumba-a-Bayabao, Bubong, Butig, Lumbatan, Bayang, Binidayan, Pagawayan and Tubaran (Lanao del Sur); Carmen and Alamada (North Cotabato), Buldon and Upi-Dinaig (Maguindanao), and Columbio, Tulunan, Isulan, Bagumbayan and Surallah (Sultan Kudarat)

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Laws/policies	Year	Stipulation	Impact
The Third Wave (1970s to mid-1980s)			
Presidential Decree No 27 (Marcos martial law regime)	1972	Declared the entire nation as an agrarian reform area	Effectively rejected the concept of communal land or ancestral domain land as forms of land ownership
EO No. 411	April 1973	Creation of a Presidential Task Force on the Reconstruction and Development of Mindanao (PTF-RadMin). Its primary tasks included: (i) Immediate assessment of the damage wrought on private property and government facilities, services and establishments; (ii) preparation of an integrated plan necessary for the full reconstruction and rehabilitation of Mindanao; and (iii) restoration of peace and order by adequate military operations, apprehension of rebellious leaders and followers, and the implementation of a selective amnesty and rehabilitation program. It launched the Reconstruction and Development Program (RAD) for Muslim Mindanao in early 1974	
P.D. No. 302	Sept. 11 1973	Separation of the province of Tawi-Tawi from Sulu	
P.D. No. 341	Nov. 22 1973	Further divided the old Cotabato into three more provinces: North Cotabato, Maguindanao, and Sultan Kudarat.	Gerrymandering
P.D. No. 356	Dec. 27 1973	Separation of the province of Basilan from Sulu	
Presidential Decree No. 410	March 11 1974	Declared that ancestral lands occupied and cultivated by national cultural communities as alienable and disposable. This initiative by the RAD-Min was purportedly meant to help address land conflict in Mindanao.	Allowed private titling of hitherto ancestral lands held by IPs and Moros
Presidential Decrees No. 690, 719 and 1703	1975	Creation of the Southern Philippines Development Authority (SPDA) as the agency responsible for the "initiation and/or implementation of development projects in Southern Philippines". This absorbed the powers of the earlier CNI, the Mindanao Development Authority (MDA), the Presidential Committee for the Rehabilitation and Development of Southern Philippines (PCRDSP), the Presidential Task Force for the Rehabilitation and Development of Mindanao (PTF-RadMin), and the Special Program of Assistance for the Rehabilitation of Evacuees (SPARE).	
GPH-MNLF Tripoli Agreement	1976	The Tripoli Agreement of 1976 listed 13 provinces and nine cities as "areas of autonomy" –the provinces of Basilan, Sulu, Tawi-tawi, Zamboanga del Sur, Zamboanga del Norte, North Cotabato, Maguindanao, Sultan Kudarat, Lanao del Norte, Lanao del Sur, Davao Del Sur, South Cotabato and Palawan and "all the cities and villages" therein.	At that time, there were nine cities within the autonomy areas: Zamboanga, Dipolog, Dapitan, Pagadian, Cotabato, Iligan, Marawi, General Santos in Mindanao and Puerto Princesa in Palawan. By 1976, only five of the 13 provinces and one of nine cities were Moro-dominated.
PD 1628	25 March 1977	Declaration of Autonomy in Southern Philippines after signing of the 1976 GPH-MNLF Tripoli Agreement	
PD No. 1414	1978	Creation of the Office of the Presidential Assistant on National Minorities (PANAMIN). This addressed all non-Muslim minorities, complementary to the work of the Ministry of Muslim Affairs (MMA). The MMA was established in 1981 through EO 697 and was renamed as the Office of Muslim Affairs (OMA) soon thereafter.	

Laws/policies	Year	Stipulation	Impact
The Third Wave (1970s to mid-1980s)			
Batas Pambansa Blg. 20	23 March 1979	Creation of the Autonomous Regions comprising of Regions 9 and 12. Exercising his martial law powers, then President Ferdinand Marcos issued Proclamation 1628 on March 25, 1977 creating two Regional Autonomous Governments (RAGs) and setting the plebiscite on April 17 that year in the 13 provinces and nine cities of Mindanao and Palawan that the Tripoli Agreement identified as "areas of the autonomy." In the 1977 plebiscite, the cities of General Santos and Puerto Princesa and the provinces of Palawan, South Cotabato and Davao del Sur rejected inclusion in the two RAGs. The MNLF protested Marcos' creation of two autonomous regions instead of just one.	
Executive Order No. 969	1984	After PANAMIN Secretary Manuel Elizalde Jr's fled to the US shortly before the fall of the dictatorship, the powers of PANAMIN and OMA were merged into the Office for Muslim Affairs and Cultural Communities (OMACC) in 1984. While Executive Order No. 969 claimed that "it is desirable to combine those agencies engaged in allied and complementary operations and activities relative to the development of the cultural communities in order to achieve better coordination, increased effectiveness, and unanimity of purpose in terms of ultimate results", the lumping together of Moro and lumad issues soon proved to be ill-advised.	
1987 Constitution	11 February 1987	Allowed for the creation of autonomous regions in the Cordillera and Muslim Mindanao - "geographical areas sharing common and distinctive historical and cultural heritage, economic and social structures" (Art. 10, Section 15).	
E.O. No. 122-A, B, C		Upon Corazon Aquino's assumption of office, the OMACC was replaced by three bodies under the Office of the President: the Office for the Muslim Affairs (OMA); the Office for Northern Cultural Communities (ONCC); and the Office for Southern Cultural Communities (OSCC).	
Comprehensive Agrarian Reform Law (RA 6657)	1988 (Aquino administration)	Placed all agricultural lands, regardless of crops planted, under agrarian reform and lowered the individual retention ceiling to tillers (5 has for married couple, and 3 has for an individual)	A&D lands and plantation farms in Mindanao, under mother titles, were distributed to tillers. Until now these mother titles have not been divided and distributed as individual titles to approximately 2 million CARP beneficiaries in the country
The Fourth Wave: mid-1980s - present			
RA 6734	1 August 1989	<p>Creation of the ARMM covering four provinces of the 18 that participated in the plebiscite: Maguindanao, Lanao del Sur, Sulu, and Tawi-Tawi. RA 6734 was based on the mandate of the 1987 Constitution but the insitutionalization of the autonomous region through the 1987 Constitution was viewed differently by the Moro National Liberation Front (MNLF) which campaigned against its ratification. The MNLF at that time maintained that the 1976 Tripoli Agreement must be implemented "in letter and spirit."</p> <p>The MILF and the Moro Islamic Liberation Front (MILF) boycotted the ratification of the 1987 Constitution.</p> <p>In the November 1989 plebiscite following RA 6734, only four of the 13 provinces and none of the nine cities voted for inclusion in what would become the following year, the Autonomous Region in Muslim Mindanao (ARMM) - comprising of the provinces of Sulu, Tawi-tawi, Maguindanao and Lanao del Sur.</p>	The ARMM Regional Legislative Assembly has the right to create new LGUs.

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Laws/policies	Year	Stipulation	Impact
The Fourth Wave: mid-1980s - present			
RA 7228	1992	Creation of Sarangani, which was carved out from South Cotabato.	
Philippine Mining Act (RA 7942)	1995 (Ramos administration)	Provided the legal framework for the development of the mining industry in the Philippines	Led to further encroachment to lands owned by IPs and other upland dwellers where mineral deposits are found
GPH-MNLF Final Peace Agreement	1996	The 1996 FPA provided for the strengthening and expansion of the ARMM as well as the establishment of transitory bodies such as the Southern Philippines Council for Peace and Development (SPCPD) and the Consultative Assembly (CA), and the proclamation of provinces and cities under the Special Zone of Peace and Development (SZOPAD), which were meant as opportunities for the MNLF to take active part in public management as an intrinsic part of self-governance.	During the ARMM turnover ceremony from Pangandaman to Misuari in September 1996, President Ramos crowed that "although the ARMM has been in existence since 1990, only now we can say that it is accepted by all of its constituents". However, The end of Misuari's three-year term in 1999 led to his ouster not only as ARMM Governor and SPCPD Chairman but also as MNLF Chairman, with the Council of 15 declaring Misuari 'incompetent', and effectively replacing the MNLF Central Committee.
	1997	After the signing of the 1996 Final Peace Agreement with the MNLF, these "areas of autonomy" – by then already expanded from 13 to 14 provinces because Sarangani province was carved out of South Cotabato – were made part of the Ramos administration's Special Zone for Peace and Development (Szopad), which along with the Southern Philippines Council for Peace and Development, were supposed to be the transitional implementing mechanisms for a future "expanded" ARMM.	Areas under SZOPAD included Basilan, Sulu, Tawi-Tawi, Zamboanga del Sur, Zamboanga del Norte, North Cotabato, Maguindanao, Sultan Kudarat, Lanao del Norte, Lanao del Sur, Davao del Sur, South Cotabato, Sarangani and Palawan, including the cities of Cotabato, Dapitan, Dipolog, General Santos, Iligan, Marawi, Pagadian, Zamboanga, Puerto Princesa and Kidapawan.
Indigenous Peoples' Rights Act of 1997 (RA 8371)	1997	Reaffirmed that it is the state policy (as contained in the 1987 Constitution) to protect IPs rights over their ancestral land	Created a legal and implementation conundrum on the boundaries between lands that are eligible for CARP distribution and lands communally owned by the IPs, and IP lands and forest protection reserves or areas declared as sites for mining development
Revised Organic Act of the ARMM (RA 9054)	31 March 2001 (Macapagal-Arroyo Administration)	Strengthened the ARMM Organic Act in line with the 1996 GPH-MNLF Final Peace Agreement. (By then, the "areas of autonomy" listed in 1976 had expanded to 15 provinces with the creation of Zamboanga Sibugay from Zamboanga del Sur; and the nine cities had expanded to 14 with the conversion of the towns of Digos, Isabela, Kidapawan, Koronadal and Tacurong into cities. Of 15 provinces, only one more joined the four ARMM provinces: Basilan, while only one city out of 14, voted for inclusion in the "expanded" ARMM: the Islamic City of Marawi. Lamitan town in Basilan became the second city of the ARMM when it was converted into a city in 2007.)	

Laws/policies	Year	Stipulation	Impact
The Fourth Wave: mid-1980s - present			
	2003	CARP suspension in Maguindanao and Lanao	Massive corruption attended the implementation of the voluntary offer to sell (VOS) component of CARP
	2008	OMA was abolished in 2008 with the creation of the National Commission on Muslim Filipinos (NCMF). The powers and functions of the ONCC and OSCC were merged as organic offices of the National Commission on Indigenous Peoples (NCIP), which was created through RA 8731, or the Indigenous Peoples Rights Act of 1997. However, the Office for Southern Cultural Communities (OSCC) remains active as a devolved agency of the ARMM, although it functionally overlaps with NCMF and NCIP.	
GPH-MILF Memorandum of Agreement on Ancestral Domain	2008	The MOA-AD, already initialed by the peace panels a week earlier, on July 27, was not formally signed on August 5 because of a temporary restraining order issued by the Supreme Court afternoon of August 4.	
GPH-MILF Comprehensive Agreement on the Bangsamoro	March 2014 (Aquino Administration)	Building on the 2012 GPH-MILF Framework Agreement, the CAB provided for the creation of a Bangsamoro government covering a proposed 'core territory' -- the core territory set forth in the 2008 MOA-AD plus the <i>barangays</i> in North Cotabato that had voted to join the ARMM during the 2001 plebiscite, as well as "Bangsamoro waters". It set forth a number of land administration and management reforms, framing this in terms of exclusive and concurrent powers vis-à-vis National Government. Protection of indigenous peoples' rights to fusaka inged, or native title.	Final impact to be determined, pending the passage of the Bangsamoro Basic Law.

Annex E. Program-Based Systematic Approach to Land Tenure Problems in the Bangsamoro

I. Development of a Land Policy Framework that would address landlessness, land dispossession and marginalization, and land conflict

A. Initial assessment of land tenure situation in the Bangsamoro Territory

1. Review of existing studies on land tenure within Bangsamoro Territory
2. Secure land tenure data from the national land administration agencies/ARMM counterpart
 - a. DENR - land classification, land survey, land patents, permits and other tenurial instrument issued in forest or non-alienable and disposable lands, mining or mineral claims/permits issued and other related land information records relating to tenure in both A & D and non-A & D lands; and resources and physical mapping and remote sensing data/information from NAMRIA;
 - b. LRA - Torrens certificate of titles issued in Bangsamoro Territory
 - c. DAR - certificate of land ownership awards, emancipation patents and other agrarian reform tenure records issued within Bangsamoro Territory
 - d. NCIP - ancestral domain land titles issued within Bangsamoro Territory
 - e. Other national agencies with demographics data/information
3. Secure land tenure data from the local government
 - a. LGU Assessor's and Treasurer's Offices - data on land taxation
 - b. LGU Municipal and Planning Offices - data on land use
4. Secure land conflict data from regular courts/administrative agencies
5. Secure land conflict data from non-government agencies
6. Integration of the gathered land administration data to determine the following:
 - a. Extent of A & D and non-A & D lands (legal classification) and extent of NCIP titles issued
 - b. In Non- A & D lands
 - Extent of actual forest cover; forest utilization for non-forest use/purposes, i.e. agro-forestry (physical features of the land)
 - Extent of actual occupation and utilization in non-A & D lands by the community, i.e. actual occupation of forest land
 - c. In A & D lands
 - Extent of surveyed and unsurveyed lands within lands declared as A & D
 - d. In surveyed lands

- Legal tenure status of the surveyed lands - rapid tenure appraisal only to determine whether DENR/DAR had covered the area in previous land titling programs of the government; CARP, Land for the Landless Program, Handog Tituto, Cadastral Proceedings; old torrens titles;
 - Land tenure conflict - rapid appraisal of general data from regular courts and other administrative agencies that handles conflicts including formal and informal institutions that conducts alternative dispute resolution; and
 - Other tenure arrangements in surveyed lands that is peculiar to the Bangsamoro Territory, more importantly those that are covered by legal titles
- e. In unsurveyed lands
- Land tenure situation in lands that are not covered by land survey - what are the land utilization arrangement within this community
 - Land tenure conflict - how are conflict resolved in this area

B. Consultation with stakeholders including presentation of initial land tenure assessment

C. Consultation with Congress, the Office of the President and other bodies created pursuant to the peace process

D. Adoption of a policy framework by the Bangsamoro Government that should include:

1. Policy on existing legal titles without conflict
2. Policy on existing legal titles with conflict
3. Policy on land adjudication or disposition of lands that has no existing legal titles
 - a. With legal claimants
 - b. Without legal claimants
 - c. With conflicting/opposing claimants
4. Policy on Non-Alienable and Disposable lands actually occupied and used by the community
5. Policy on lands claimed by indigenous peoples community
 - a. With titles issued by NCIP
 - b. Without titles issued by NCIP

E. Structure/Institutions for the administration of land in the Bangsamoro Territory (See II.A); and

F. Framework on funding, financial resources and technical support

- a. National government commitment; and
- b. International financial institutions.

The policy framework agreed upon should consider the actual occupation/possession of land and the legal title existing thereon in order to make any disposition or adjudication acceptable to all interested parties, participants and the community.

II. Enactment of laws, rules and regulation in support of the land policy framework

A. Creation of unified land administration institutions/agencies in order to avoid overlaps and conflicting mandates, which should include:

1. Jurisdiction and Authority of land agencies created;
2. Clear mandates of land agencies created - this should be reflective of the policy framework agreed upon;
 - a. Land management arrangements in Non-Alienable and Disposable (Non-A & D) and Alienable and Disposable (A & D)
 - b. Rules on classification and reclassification of lands Non-A & D lands to A & D lands for disposition;
 - c. Acquisition and re-distribution of private lands (if eminent domain and police power is exercise only);
 - d. Adjudication, Disposition and Distribution of alienable and disposable lands;
 - e. Land conflict settlement procedure and processes;
 - f. Administrative;
 - g. Judicial;
 - h. Alternative Dispute Resolution; and
 - i. In general, other land management of lands of the public domain
 - j. The law should be able to effectively address isolated land conflicts that are based on legal and recognized tenurial rights of its inhabitants within the territory.
3. Technical, legal and other human resources requirements
 - a. Survey and Spatial Data - detailed land information (parcel base land information, if possible) requires surveys and a cadastral land information system to avoid duplication of work, overlapping claims that may lead to conflicts and achieve efficiency in the administration of land; geodetic engineers are the primary service provider of this requirement
 - b. Information technology, i.e. land information system/geographic land information system (LIS/ GIS) is an important component of the system considering the voluminous information on land including tenure, use, environmental risk management, conflicts, infrastructure, etc.
 - c. Legal professionals that includes judges (for the regular courts), lawyers, para-legals, public land inspectors, adjudicators, mediators, among others
 - d. Human resource training should be given utmost consideration in order to assure sustainable operation of the system

III. Preparation of a Bangsamoro Land Tenure Program in the Bangsamoro Territory

A. The unified land agencies created under the BBL must be able to address isolated land tenure conflicts as it occurs in the territory. However, a systematic territory wide systematic approach may be adopted by the Bangsamoro Government based on the policy framework formulated.

B. Systematic approach to address land tenure issues by the Bangsamoro land agencies that is similar previous land tilting programs of the central government.

1. As much as practicable, the land tenure program should based on:
 - a. Community based systematic adjudication through administrative processes in order to promote efficiency and transparency in the process; and
 - b. Referral of complicated land issues to judicial and/or regular courts or such other higher land conflict adjudication body as may be determined by the local law enacted that can better receive and appreciate evidence on land claims.
2. Preliminary Land tenure assessment to determine the scope, the extent and the targets of land tenure program
 - a. Technical support from national agencies similar to DENR-implemented land tenure programs such as the World Bank-DFAT (AusAid)-GoP/DENR Land Administration and Management Project (LAMP)
 - b. Adoption of applicable technical innovations by national agencies like the DENR Land Administration and Management System (LAMS)
 - c. Arrangement with LRA and its information technology provider LARES for land title data sourcing
 - d. Technical support from the donor community engaged in land administration and management projects
3. Financial study of the cost of the land tenure program as per land tenure assessment

C. Funding support from the National Government and other international institutions to implement the policies.

1. Inclusion in the annual budget of the national government; and/or
2. Loans/Grants from international funding agencies.

IV. Implementation of the Bangsamoro Land Tenure Program

A. Capacity building in Bangsamoro land agencies

1. Technical capacity building
 - a. Land surveys and cadastral survey system
 - b. Land information system/Geographic Information System (LIS/GIS) operation
2. Adjudication and Legal capacity building in land disposition/adjudication (based on the enacted Local Bangsamoro Laws)
 - a. Training on the laws on land disposition/adjudication
 - b. Training on community preparations
 - c. Training on the processes and procedures including documentation of claims and preparation of awards and/or grants
 - d. Training on conflict management and conflict resolution processes
 - e. Training on report preparations on disposition and adjudication
3. Project implementation capacity building
 - a. Training on project finance and administration
 - b. Training on project documentation and report preparation by field personnel
 - c. Training on monitoring and evaluation of program implementation

B. Detailed land tenure assessment for the implementation and roll-out of the program

1. Land data integration in per area of operation basis to determine allocation of resources
 - a. Municipal based assessment
 - b. *Barangay* based assessment
2. Initial coordination with selected local governments for project implementation
3. Selection of areas
 - a. Pilot areas
 - b. Phase base project programming
 - c. Roll-out areas
4. Setting up of quantifiable targets and milestones on selected areas for project implementation
5. Resource mobilization and deployment of resources in the selected areas

C. Actual Implementation

1. Detailed coordination and planning with the local government units and targeted communities
2. Actual conduct of land adjudication in the area
3. Monitoring and evaluation of program

- V. Periodic Review and Assessment of Program Implementation
 - A. Review and assessment quantifiable results
 - B. Review and assess field experiences
 - C. Revised and amend rules and regulation to suit field experiences when necessary

Annex F. Land Restitution in Post-Conflict Settings: Principles and Considerations¹²⁰

Background

Addressing property rights is important in post-conflict settings as a means to rectifying past injustices related to land, and as a tool for promoting reconciliation and ensuring longer-term stability. It involves development of comprehensive policies on rights and the mechanisms for exercising them through legislative, regulatory and administrative frameworks. Land reform can sustain peace only when it achieves broader access to land within an environment of improved productivity and income for new landholders and more agricultural growth in general. If done incorrectly, initiatives to improve land administration in post-conflict situations can have the unintended effect providing a basis for renewed conflict.

Land policies, including restitution, need to be developed in a manner that does not create an enabling environment for new conflicts. Measures to address post-conflict priorities, including restitution, need to address general land tenure problems. And they must take into account how land administration issues have changed in the post-conflict situation. The conflict may have changed the mechanisms for acquiring and exercising land rights, thus resulting in competing claims for pieces of land. The effects of land policies on vulnerable persons, including women, ethnic or religious minorities and the poor, need to be identified. Laws, reforms and enforcement mechanisms implemented in a top-down approach will not succeed without local ownership/popular support. In particular, there is a strong need for localized and participatory-based approaches.

Land Restitution – Principles

Land restitution, usually covering physical restitution, restitution in-kind and/or compensation schemes, is one mechanism that can be used to address property rights in a post-conflict setting. Land restitution has been addressed directly in a growing number of UN resolutions, peace treaties and reports of UN treaty bodies. However, the substance of restitution in these sources varies considerably, as do the factors on the ground in situations where restitution would be implemented. Large-scale restitution processes have taken place in both post-conflict settings (eg. Bosnia, Colombia, Croatia, Kosovo) and political transitions outside of serious conflict (Eastern Europe, South Africa). Numerous smaller-scale restitution processes have taken place globally as well.

It is also usually a highly political process. Dealing with restitution in effective manner is necessary not only to avoid dispossession of local populations, and thus further conflict, but also to allow re-engagement in land practices that promote sustainability and development. Yet restitution is just one component of overall land reform and should be connected with other efforts to improve land administration.

The lack of fair and efficient restitution process, including compensation can be a considerable obstacle to post-conflict reconciliation since restitution is viewed as an element of restorative justice. If restitution does not effectively address gross inequality in landholding the likelihood of violent conflict increases substantially. An effective restitution process needs to anticipate other land-related disputes likely to emerge in the post-conflict setting, for example land grabs by elites, which must be addressed through the restitution or linked land administration.

120 This note was prepared by Paul Prettitore, Senior Public Sector Specialist, World Bank.

The most substantive elaboration of principles to guide resolution of land disputes and restitution for displaced persons, from a rights-based perspective, are the *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (the Pinheiro Principles), issued in 2005. The key principles are:

- Peace agreements should include initiatives to adequately address housing, land and property issues that require remedies under international law or threaten to undermine the peace process if left unaddressed;
- States are obliged to establish and support frameworks (institutional and administrative) to assess and enforce Housing, land and property claims, including dispute resolution mechanisms;
- States should ensure judicial, quasi-judicial, administrative or customary adjudication of land and housing rights is accompanied by measures to ensure registration or demarcation as is necessary to ensure legal security of tenure;
- Restitution, including compensation, is the preferred remedy for displacement and a key element of restorative justice; and
- Recognition of the rights of tenants and other legitimate occupants or users of property subject to restitution.

Land Restitution – Models

There are a number of mechanisms that have been designed to address restitution in post-conflict settings. These include claims commissions, specialized courts, alternative dispute resolution bodies, customary law bodies and financial compensation schemes. Approaches to restitution remain disparate, and in the recent past many restitution policies were undermined by conceptually flawed strategies, biased policies and weak institutions. Despite the more recent focus on restitution as both a right and a means to address land administration issues in a post-conflict setting, there is no single model restitution process. This is appropriate, given the local contexts (legal, institutional, cultural, demographic, financial, social and economic) that must be taken into account to make a restitution process effective.

In this context it is more beneficial to frame development of restitution in the context of key issues that need to be addressed as opposed to adapting restitution models. These key issues include:

Policy

- Land restitution should be based on sound policy decisions in terms of what persons and land are covered by restitution – this is particularly important in areas where multiple displacements, migration and implementation of previous policies and legislation have created multiple claims over land;
- Identify the institutions, whether existing or newly-created, that will be responsible for implementation of restitution;
- Linking restitution with broader land administration initiatives, such as cadaster (surveying and mapping) and land registration;

Legislative/regulatory

- Determining eligibility for restitution (who has the right to claim);
- Types of tenure recognized and the evidentiary bases for proving it;
- Defining the statutory period covering restitution:
 - o Determining the time period covered for eligibility (start and end dates), and
 - o Determining a cut-off date for submission of claims (to avoid long-term insecurity of land tenure);
- Identifying the remedies available to claimants (physical restitution, restitution in-kind, financial compensation);
- Establishing who decides which remedy is awarded (i.e. can the displaced persons chose their individual remedy or is the remedy dictated by government);
- Determining restrictions on transfer of restituted land (eg. do displaced persons have to physical return to land in order to be restituted, or do displaced persons have to hold restituted land for a period of time before they can sell it);
- Establishing who qualifies as a *bona fide* secondary occupants and what remedies are available to them (ownership, restitution in-kind, financial compensation);
- The role of citizen engagement in design and implementation of restitution processes;

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- Protection of the rights of vulnerable persons (women, poor, minorities, indigenous persons);

Administrative

- Estimating the number and type of potential claims to ensure resources are available to implement the restitution scheme;
- Establishing the role of judicial versus administrative procedures in adjudicating claims (judicial procedures may provide more protection of rights, but are often slower and restitution claims may overwhelm judiciaries; administrative procedures are often faster and can be made more 'specialized');
- Determining if/how a restitution decisions affects the land registry (automatic registration for previously unregistered land, joint ownership for couples);
- Enforcement mechanisms, particularly eviction processes related to removal of secondary occupants;
- Establishing procedures for filing and adjudicating claims (how claims are submitted, timeframe for adjudication, appeals process, prioritization of claims from vulnerable persons);
- Ensuring capacity of designated institutions to receive, adjudicate and enforce restitution decisions;
- Outreach and information/awareness to potential beneficiaries;
- Ensuring vulnerable persons (women, poor, minorities, indigenous persons) have adequate access to services (claims process, information/awareness);

Financial

- Ensuring adequate financing for administrative structures implementing restitution;
- Ensuring adequate financial resources to fund compensation;

Linking restitution with land administration and other initiatives

- Integrating restitution processes with land surveying and registration initiatives;
- Linking restitution with initiatives supporting return of displaced persons (i.e. do displaced persons have to physical return to benefit from restitution); and
- Linking restitution with dispute resolution for related land disputes (inheritance, boundaries, joint-ownership).

Mindanao's Restitution Challenges and International Experience

There are a number of land administration issues that are strongly linked with restitution. The report noted that persons in the conflict-affected areas already experience low-level, non-political land issues (eg. inheritance, boundaries) that can be resolved by strengthening existing legal and administrative frameworks. Institutions responsible for adjudicating this disputes should also be strengthened.

Limited data and reach of cadaster/registry. Strongly linked with implementation of a restitution process are the lack of land-related data and limited reach of the official land cadaster and registry. On the former, limited land data will undermine attempts to estimate the number and types of claims that can be expected through a restitution process, which might negatively affect planning for implementation. On the latter, the lack of a functioning cadaster and land registry will also negatively affect the ability of claimants to prove rights to land through the restitution process, since cadaster and registry records are normally the most effective forms of evidence. In their absence alternative forms of evidence would need to be developed (eg. tax receipts, testimony of witnesses, community mapping) and decisions on restitution would need to provide a basis for entry in the cadaster and registry for previously unregistered land.

Restitution for long-term displaced persons. Providing restitution for the long-term displaced persons poses a number of challenges. In particular, the displaced may prove less likely to return, especially if they have viable options elsewhere or have migrated from rural to urban areas. Surveys of Colombia's displaced population have shown a minority – less than 20% - want to return to their pre-conflict land. Anecdotal evidence from Bosnia suggests many individuals who sought restitution did not return, even though the displacement was relatively short-term.

Another challenge is that land abandoned for long periods is perhaps more likely to be occupied, with the rights of occupiers strengthening over time. Passage of time may also be a consideration. Rwandan refugees who had abandoned land more than ten years before the signing of the Arusha Accords were forced to forego the right to physical restitution in order to ‘promote social harmony and national reconciliation’ in light of shortage of land and the need to avoid large-scale resettlement. Those excluded from restitution were instead meant to benefit from ‘viligization’ programs

Rights of secondary occupants. Given the waves of displacement and migration in Mindanao the issue of secondary occupants, both *bona fide* and not, will be a challenge. Namely, the rights of current and former occupants of the land must be balanced, normally based on the extent to which the current occupant is *bona fide*. And any evictions would need to be part of a fair and transparent process. International experience provides some guidance.

Some restitution processes have been geared heavily in favor of return of land to displaced persons (Bosnia, Kosovo, South Africa), primarily because secondary land allocations were made in a discriminatory manner, while others were less favorable to the displaced (Croatia). Secondary occupants without the means to meet their housing needs have been entitled to alternative accommodation paid by the state (Bosnia, Kosovo), and have been entitled to compensation for loss of land (South Africa) and improvements made to land (Bosnia, South Africa).

Land acquisition through fraud and duress. While transfers conducted through fraud and duress should be annulled, determining such factors during a conflict is complicated. And reviewing transfers individually would be incredibly time and resource intensive. In Bosnia, all land transfers (sales, exchanges) made during the conflict were automatically annulled by legislation under the assumption fraud and duress were implicit during the conflict. The burden of proof to show transactions were not fraudulent or conducted under duress was shifted to recipients of land.

Restitution versus compensation. One of the key issues to address in the restitution process is determining when restitution (physical or in-kind) is the appropriate remedy versus financial compensation. Tied to this is who makes the determination – the claimant or the state. For example, in Bosnia those eligible for restitution could choose whether they wanted physical restitution or financial compensation. South Africans could request restitution, restitution in-kind or financial compensation. In Colombia, a claimant can list a preference for physical restitution or financial compensation, but a judge ultimately decides on the remedy based primarily on the security situation in the area where the land is located. Compensation is an attractive remedy, especially in cases of long-term displacement or other instances where displaced persons do not want to return, often because of poor security or rural to urban migration.

However, compensation schemes in lieu of restitution in post-conflict settings have not proven highly successful. The primary obstacles include lack of funding to support compensation and difficulty valuing land, especially if displacement has been long term. In Bosnia, very few beneficiaries received compensation despite the fact it was made a constitutional right. The Government of Bosnia never funded the compensation fund, and international donors, preferring to support return of the displaced over integration for political reasons, never provided assistance. South African authorities have struggled with determining adequate levels of compensation, especially when displacement was longer-term.

The role of customary norms. Customary forms of land tenure are present in Mindanao. Recognizing customary rights and processes in the restitution process is important to ensure such rights are not extinguished. Integrating them with restitution and broader land administration initiatives is important, but also complicated. They need to be integrated in a way to prevent ambiguity between application of customary and formal administration, as ambiguity can be seized upon to ‘forum shop’ between the customary and formal, and to ensure customary administrations are reasonably defined and do not perpetuate discrimination and exclusion of certain categories of persons.

The Land Act in Uganda (1998) recognized customary forms of tenure and administration for the first time. However, implementation of the legislation saw manipulation of the process of converting customary tenure to formal land registration by squeezing women out of joint ownership. Post-conflict legislation and policies debated in Rwanda and Mozambique

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included debate on the integration of formal and customary land administration.

Indigenous persons. Providing restitution to indigenous persons is normally linked with integration of customary norms. Attempts to recognize restitution rights for indigenous persons are often complicated by the facts land claimed by them is usually not demarcated in the cadaster nor recognized by the land registry, and often conflicts with demarcation and registration of public lands and private property. The Government of Colombia recognized land rights of indigenous persons as part of its transitional justice framework, and established a special process by which indigenous persons could file restitution claims as a group. However, very few claims have been adjudicated to date primarily because these involve large amounts of land that include public land, mining concessions, national forests and private land holdings.

Linking restitution with improved land governance. Restitution needs to be implemented in the context of broader land governance. The effectiveness of a potential restitution scheme can be improved by addressing land governance issues in Mindanao including: elite capture of private and public lands; institutional overlap that results in issuance of multiple titles to the same land; de facto acquisition of land through occupation; and determining the existence of private tenure rights over land considered public land.

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