

LAND GOVERNANCE IN THE BANGSAMORO

SUMMARY

The peace pact between the Philippine government and the Moro Islamic Liberation Front (MILF) includes comprehensive agreements on wealth sharing, political power sharing and normalisation. It is seen as the antidote to the decades-long armed rebellion that brought so much economic hardship and suffering to the southern Philippines. However, the agreement falls short of addressing the multitude of land-related disputes that trigger much of the violent conflict in Muslim Mindanao. This policy brief identifies the legal and administrative remedies that should be undertaken to fill this gap and offers a feasible course of action to prevent or resolve land-related conflict between and among families and clans in the region. The principal recommendation is to establish a Bangsamoro Land Commission that will design a pluralistic institutional framework for land governance. Such a framework would allow the productive use of land resources, accommodate customary institutions in land governance and traditional institutions of dispute resolution, and devolve the management of land classification, registration and land development functions to local government units.

INTRODUCTION

Access to and control over land is central to the dynamics of violent conflict in the Bangsamoro region. Historical claims by poor communities of land grabbing against the colonial and post-colonial government and corporate agribusiness underscored the demand for social justice and the aspirations for an independent homeland that fuelled the rebellion in Mindanao. Yet, in establishing the appropriate regime for land governance, the future Bangsamoro government must move beyond the land-related sources of violent conflict at the onset of the Moro rebellion. Land-related conflict in the present day is propelled by the more complex interaction between and among local strongmen and clan leaders, agribusiness interests and government land regulatory agencies. These violent contests are aggravated by the convoluted and fragmented nature of land governance and the existence of a thriving informal land market. There are high expectations that these critical realities can be easily addressed by the peace agreement reached between the Philippine government and the Moro Islamic Liberation Front (MILF) and by the new Bangsamoro government. However, embedding an inclusive, effective and conflict-sensitive land management system will require institutional reforms at the local, regional and national level.

HISTORY OF LAND CONFLICT

The colonial incursion into Mindanao led to the occupation of land and the ejection of indigenous people and Muslims from their communities. This was aggravated by the marginalisation of Muslim Mindanao from national economic growth. Both elements contributed to the decades-long rebellion against the national government. The system whereby vast tracts of land were under stewardship or communal use – with local political elites and tribal chieftains presiding over the distribution of land – was replaced by a Western system of land ownership. Under this system, plots of land were surveyed, subdivided and registered under corporate or individual ownership.

These changes were widely implemented under the American colonial regime. The colonisers encouraged peasants and poor rural families from other parts of the country, as well as foreign and Filipino companies headquartered in Manila, to conquer the ‘frontier’ areas of Mindanao as a strategy to bring the Muslims, who were never conquered by the Spaniards, under their control and to integrate Mindanao into the rest of the Philippines. The colonisers awarded agricultural lands measuring as much as 24 hectares to individuals and over 1,000 hectares to corporations, also introducing individual property rights.

Political leaders of the Philippine Commonwealth (1935–1946) aggravated local grievances and prejudices and fuelled inter-ethnic conflict when they opened up more tracts of land in Mindanao for continued in-migration. Solving agrarian unrest and rebellion in conflict hotspots through a systematic process of migration to Mindanao became official policy. Companies such as the National Development Company were established to facilitate the entry of settlers and companies into the region. Migration led to violent tensions that eventually exploded into inter-ethnic armed struggles among Muslim farmers, indigenous peoples and Christian settlers.

The negative effects of inter-clan and ethnic conflicts from the 1950s are still felt today. Violence has frequently erupted whenever former occupants of farms or residential lands that they abandoned during the inter-ethnic wars in the 1950s and the Moro rebellion in the 1970s returned and renewed their claims on these properties. Meanwhile, the absence of legal titles and the continued system of communal ownership has made the current occupants vulnerable to being ejected from these properties. These features have made land easily accessible only in informal markets, where farms are sold, transferred or mortgaged.

FRAGMENTED NATURE OF LAND GOVERNANCE

Informal land markets thrive because they enable easy entry and exit for farmers and other rural producers who want to access land for crop production, even though this vibrant secondary market also creates an environment of uncertainty that provokes violent horizontal conflict. These markets persist because of the fragmented nature of land governance in Mindanao – a situation where national agencies and judicial bodies have overlapping mandates and functions within the same territory and implement rules and procedures that run counter to each other.

At the national level, three government agencies compete for power and authority in administering land across the country: the Department of Environment and Natural Resources (DENR); the Department of Agrarian Reform (DAR); and the National Commission for Indigenous Peoples (NCIP). The DENR and the DAR both undertake the ‘administrative titling’ of land, with the former focused on alienable and disposable land and the latter on private agricultural land. Meanwhile, the NCIP under the Indigenous Peoples’ Rights Act of 1997 (IPRA) awards certificates of ancestral domain or ancestral land titles. In addition to these organisations, there is the Land Registration Authority (LRA), where land ownership is registered, along with the local and national judicial courts that often intervene in settling claims and disputes.

The policy formulation of land administration agencies at the national level is characterised by a lack of coordination and incoherence, leading to proxy fights between their respective provincial agencies. Under the previous administrations of the Autonomous Region in Muslim

EXAMPLES OF LAND-RELATED CONFLICTS

Conflict resulting from the impingement of formal rules on informal agreements is illustrated in the cases of South Upi and Ramcor, the poor farming municipalities in Maguindanao and one of the provinces comprising the ARMM.

The Maguindanaon people who lived in South Upi – before the wars in the 1970s forced them to evacuate – wanted to return there and had applied for land titles with the DENR. They could no longer locate their plots. Moreover, even if they could, the land was already occupied by the Teduray, who claimed that they were the land’s original owners, or by Ilonggos, to whom the Teduray had sold land through the informal markets to raise cash to sustain them during family emergencies or bad harvests. The Teduray, who claimed that the Maguindanaon had originally used violence to force them off their ancestral lands, said there would be bloodshed should the Maguindanaon return to South Upi.

In Ramcor, the government wanted to put a 993-hectare property, which the conglomerate San Miguel Corporation had left in 1990, into the agrarian reform programme and subdivide and distribute it to landless farmers. However, its plans were hampered by the fact that two powerful mayors controlled some 400 hectares after buying the ‘rights’ of farmers who had parcelled the plantation among themselves after San Miguel exited the property.

Mindanao (ARMM), the DENR was also insufficiently funded and could not complete the cadastral surveys that were necessary in land subdivision and titling. Funds were also lacking for recovering the lot markers that had disappeared over the years and had prevented land occupants from applying for patents or title holders from identifying their plots of land. Meanwhile, the regional and provincial office of the DAR has substantially reduced land transfer operations after the discovery of fake land titles and spurious compensation claims in the 1990s. As a result, land titles have lost their value in rural land markets – a problem magnified by the lack of land-related information, weak registration and record keeping, and flawed maps.

Conflicting outcomes that lead to violent disputes emanate from this complex array of land-administering organisations that operate with different incentives and multiple accountabilities. The situation turns nasty when inter-agency coordination fails to resolve disputes and peasants turn to their clan leaders or local strongmen to resolve contentious claims for them.

INFORMAL LAND MARKETS FILL THE GAP

Informal or secondary land markets are marketplaces where land can be transferred, mortgaged, traded or sold without the monitoring or regulation of the government's land agencies. The shortcomings of government agencies and the complexity and costliness of the formal land market have made the informal land markets the choice for those who need to monetise an asset with the least cost in terms of time and money. However, these informal markets are not ideal. Ownership is uncertain because the land is not surveyed or covered by a title. Price discovery is difficult, so those who sell or mortgage their land do so at amounts below their real value just to generate some cash. Not all transacting parties execute contracts, riddling these markets with anomalies such as multiple transfers, verbal agreements and competing claims.

A distinct feature of informal land markets in Muslim Mindanao is mediation by local strongmen, which has made these markets resilient. These leaders referee the transactions and promise to enforce the terms of agreements between two parties. But they also participate in the transactions, losing their partiality when they covet land for themselves and gaining more power as they amass more lands.

Defection by either party, including the strongman-enforcer of these informal agreements, and contracts are key triggers of conflict in the Bangsamoro. One may argue that the very nature of the land being mortgaged or sold in these markets, i.e. they are untitled and unsupervised by the state, renders these transactions vulnerable to misinterpretation and contestation. However, these informal agreements have shown a remarkable effectiveness in transforming idle land into productive farms, and local strongmen have been relatively efficient in enforcing the terms of informal contracts. This is in contrast to the formal land markets in Muslim Mindanao where pervasive rent seeking and legal contestation cripples farmers' ability to engage in production. Worse, studies have shown how these formal land arrangements have actually become sources of violence, especially when they impinge on the informal arrangements concluded at the community level.

HIGH EXPECTATIONS AND RISK OF LAND-RELATED CONFLICT

The recently signed Comprehensive Agreement on the Bangsamoro and the annexes on wealth sharing and political power sharing include several provisions on how land issues will be dealt with in the new region. However, it falls short of determining the policies and approaches for redistributing land, resolving land-related disputes and providing support services for rural producers. The law remains inadequate. It underlines that "vested property rights shall be recognised and respected" and that, for those who were unjustly dispossessed of their territorial and proprietary rights, "customary land tenure ... shall be recognised". Where property rights can no longer be

The peace process presents an opportunity to establish an institutional framework for land governance that minimises land-related conflicts.

restored, there will be "adequate reparation collectively beneficial to the Bangsamoro people". Moreover, "indigenous peoples' rights shall be respected".

The statements above are very clear declarations of intent about how to deal with land issues as sources of sustained livelihoods as well as sources of violent conflict. However, the redistributive and conflict-resolution approaches that shall be used and the overarching development strategy are not spelled out clearly.

For example, the issues of land-related regulation in areas where communal land management persist are unclear. The provisions are also silent on whether land taxes are going to be collected, and at what levels. It is important that these are tackled early in the process, preventing a 'clash of institutional arrangements' that may induce land-related conflict. Already, the Moro and indigenous peoples are looking forward to reclaiming or formally owning land, setting up future disputes over the same properties. Others are looking forward to reparations, but the process to determine aggrieved parties and what shape these reparations will take have not been specified. Meanwhile, powerful clans are planning ways to consolidate their position in the Bangsamoro, for one, by maintaining their hold on the informal land markets – through violent means if necessary.

Finally, there is no clear instruction about whether or not ex-combatants and their families will receive parcels of land under the agreement. These missing ingredients indicate that the right to land was not treated as an indispensable component of normalisation and reintegration. Indeed, the dramatic and profound language used in the framework agreement (FAB) poses a clear danger – especially if rhetoric does not match the actual practice and the agreement becomes a source of high expectations that are later unmet, leading to the eruption of conflict.

Addressing informal land markets effectively also means dealing with the hold of clans over land. Do we really think the clans will roll over rather than fight back? These dilemmas beg the critical question – do the government and the soon to be established Bangsamoro authority possess the appetite and capacity to enforce a new institutional framework for land?

CONCLUSION

Peace is coming to Muslim Mindanao, but, unless the policy on land is clear, it may be tenuous. The Comprehensive Agreement on the Bangsamoro does guarantee that property rights will be respected; however, it has not defined how this will be done – in a setting where many

transfers have taken place in the informal land markets, where ethnic groups have stayed in conflict years after the wars of the 1970s, and where informal land market transactions are overseen by strongmen. Already, the Comprehensive Agreement has raised expectations regarding land ownership among the different ethnic groups that may flare up into conflicts if they are not met.

Still, the peace process has opened an opportunity to reform the land governance system in Muslim Mindanao. It is a system marked by multiple land agencies that do not coordinate and are incoherent in their policies. The challenge for the Bangsamoro leadership is to establish an appropriate institutional framework for land governance while minimising the risks for land-related conflicts.

RECOMMENDATIONS

- **Use the Bangsamoro Basic Law, which will establish the new autonomous region, to create coherence in land governance:** Given the vagueness of the Comprehensive Agreement on the Bangsamoro on how land issues will be tackled, experts need to come together to draft the provisions in the Bangsamoro Basic Law that will clearly set out the policy on land – specifically, on how multiple land-related agencies and inconsistencies in land-related laws and regulations will be addressed. While these provisions will take time to operationalise, they will nonetheless reassure the people that land issues will be resolved and prospective investors that property rights will be recognised.
- **Create a Bangsamoro Land Commission that will develop a framework for land governance:** A Bangsamoro Land Commission, created through the Bangsamoro Basic Law, will come up with the institutional framework for land governance that will address the complex and fragmented nature of land governance and the existence of informal land markets. The framework will also address tenure, support services for farmers and conflict adjudication. While its work is defined, the commission will also give time to the new political leadership to settle in before it starts addressing land-related issues.
- **Accommodate customary institutions in land governance:** Customary land arrangements persist despite the adoption of an individualised property rights regime, while customary laws continue to be used in settling land-related disputes. These customary provisions should, therefore, be acknowledged and accommodated in the framework for land governance in the Bangsamoro.
- **Devolve some land-related functions to local government units (LGUs):** LGUs can initiate the titling of land instead of the DENR and the DAR waiting for applicants. LGUs can ask neighbours to agree on boundaries and to place markers to set the boundaries. For conflicts that arise, LGUs can institute an adjudication process. The advantages of this approach are twofold: titling is easier and the LGUs can collect more real property taxes.
- **Work on other immediate priorities for land governance:** These priorities include mapping tenure arrangements; auditing land tenure improvements; completing cadastral surveys in the ARMM and areas that will be encompassed by the Bangsamoro; developing a just compensation formula to settle disputes; raising legal consciousness about land issues among the people; and looking at parcels of land that can be immediately distributed to the landless, such as settlement areas and military reservations that are not being used by the military.

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This publication was made possible with funding from the Australian government. International Alert is also grateful for the support from our strategic donors: the UK Department for International Development UKAID; the Swedish International Development Cooperation Agency; the Dutch Ministry of Foreign Affairs; and the Department of Foreign Affairs and Trade of Ireland. The opinions expressed in this publication are solely those of International Alert and do not necessarily reflect the opinions or policies of our donors.



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