



The Joint Administrative Order No. 01 series of 2012: A Policy Review



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The "Joint Action for Land Rights" is a project jointly implemented by the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (BALAOD Mindanaw), Solidarity Towards Agrarian Reform and Rural Development (Kaisahan), and People In Need (PIN). JALR contributes to the work of civil society organizations, including human rights organizations, working with vulnerable and socially excluded groups with particular focus on supporting the empowerment of farmers and indigenous peoples to claim their rights,

including protecting the rights of human rights defenders. The project is supported by the European Union's European Instrument for Democracy and Human Rights (EU-EIDHR).



Founded in 1979, the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC) is a regional association of national and regional networks of non-government organizations (NGOs) in Asia actively engaged in promoting food security, agrarian reform, sustainable agriculture, participatory governance, and rural development.

ANGOC member networks and partners work in 14 Asian countries with an effective reach of some 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs).

The complexity of Asian realities and diversity of NGOs highlight the need for a development leadership to service the poor of Asia—providing a forum for articulation of their needs and aspirations as well as expression of Asian values and perspectives.

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BALAOD Mindanaw is a non-stock, non-profit legal resource institution providing capacity-building and legal services to its partner communities on resource tenure and other justice issues primarily in Mindanao. It was formally established and registered with the Securities and Exchange Commission (SEC) on 11 August 2000 through the efforts of a small group of individuals, lawyers, paralegals and community organizers.

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PAFID Philippine Association
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PAFID is a social development organization which has been assisting Philippine indigenous communities regain and secure their traditional lands and water since 1967. It forms institutional partnerships with indigenous communities to secure legal ownership

over ancestral domains and to shape government policy over indigenous peoples' issues. PAFID envisions indigenous communities as responsible stewards of their resources.

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Photos of the MILALITTRA ancestral domain in Miarayon, Talakag, Bukidnon and the Dulangan ancestral domain in Opol, Misamis Oriental. Photos by Jerome Dumlao, ANGOC.

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Acronyms

ADSDPP	Ancestral Domain Sustainable Development and Protection Plan
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
BMB	Biodiversity Management Bureau
AO	Administrative Order
CADC	Certificate of Ancestral Domain Claim
CADT	Certificate of Ancestral Domain Title
CALT	Certificate of Ancestral Land Title
CBFM	Community Based Forest Management
CERD	Committee on the Elimination of Racial Discrimination
CLOA	Certificate of Land Ownership Award
COSERAM	Conflict Sensitive Resource and Asset Management (a program of GIZ)
DENR	Department of Environment and Natural Resources
DAR	Department of Agrarian Reform
EO	Executive Order
GIZ	Gesellschaft für Internationale Zusammenarbeit
ICCs	indigenous cultural communities
IPs	Indigenous peoples
IPRA	Indigenous Peoples Rights Act
JALR	Joint Action for Land Rights
LRA	Land Registration Authority
JAO	Joint Administrative Order
MILALITTRA	Miarayon-Lapok-Lirongan-Tinaytayan Tribal Association
NCIP	National Commission on Indigenous Peoples
PAWB	Protected Area and Wildlife Bureau
PSA	Philippine Statistics Authority
RA	Republic Act
ROD	Registry of Deeds
UN	United Nations



The Joint Administrative Order No. 01 series of 2012: A Policy Review

Background

On 25 January 2012, the Joint Administrative Order #1 (JAO 1) on “Clarifying, Restating and Interfacing the Respective Jurisdictions, Policies, Programs and Projects of DAR (Department of Agrarian Reform), DENR (Department of Environment and Natural Resources), LRA (Land Registration Authority) and NCIP (National Commission on Indigenous Peoples) in order to address Jurisdictional and Operational Issues between and among the Agencies” was effected. JAO 1 aims to address issues of overlapping jurisdiction, operational issues and conflicting claims by and among the aforementioned agencies. Furthermore, the JAO shall apply to the coverage of lands and/or processing by DAR, DENR and NCIP and registration with LRA of Land Titles embracing lands or areas which are contentious or potentially contentious. A Joint National Committee which include DAR, DENR, LRA, and NCIP has been created to address or resolve such issues. On a similar vein, regional committees of the same nature have been established.

Five years have passed but the incidence of land conflicts due to overlapping claims persist. This situation has led to violence (at times death) among the rural poor. At the same time, there is a need to assess the implementation of JAO 1, whether it has been an effective mechanism to manage or resolve conflicts, particularly at the local level.

It is in this context that the Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC), Archdiocese of Cagayan de Oro, BALAOD

Mindanao, Institute of Land Governance (ILG), and Philippine Association for Intercultural Development (PAFID) jointly organized through the Joint Action for Land Rights Project (JALR), the policy dialogue on “Overlapping Land Claims in Northern Mindanao and Bukidnon” last 20 June 2017 in Cagayan de Oro City, Misamis Oriental.

This paper has been presented and finalized by PAFID after the said regional policy dialogue.

Introduction to Northern Mindanao: Region X

The island of Mindanao has a total land area of 9,753,000 million hectares. Of these, six million hectares are classified as forests, of which 4.1 million hectares are classified as alienable and disposable (A&D) lands.

Table 1. Mindanao Land Area and Classification (in hectares)

	Alienable and Disposable	Forestland	Total
Mindanao	4,131,306	6,068,580	10,199,886
Region X	817,669	897,134	1,714, 803
% of Mindanao	19.7	14.7	16.8

Northern Mindanao is an administrative region in the Philippines located in the island of Mindanao. Designated as Region X, the area is composed of five provinces, namely, the island of Camiguin, Misamis Oriental, Lanao del Norte, Bukidnon, and Misamis Occidental and two cities classified as highly urbanized. All of these provinces are situated in the north-central section of the island of Mindanao including the island-province of Camiguin. Cagayan De Oro is the Regional Center of Northern Mindanao.

According to the latest Philippine Forestry Statistics of the DENR, Northern Mindanao has a total land area of 2,045,851 hectares with at least half (or 52 percent) of its land area classified as forestland.

Population

Based on the 2015 Census of Population (PSA, 2015), Region X has a total population of 4,689,302, broken down as follows: Bukidnon with 1,420,000

inhabitants; Misamis Oriental (excluding Cagayan de Oro City) with 889,000; Lanao Del Norte (excluding Iligan City) with 676,000; Misamis Occidental with 602,000; and Camiguin with the smallest population at 88,000.¹

Northern Mindanao is the eighth most populous region in the Philippines and the second in Mindanao (after Davao Region) based on the 2015 census. Its major urban area is Metro Cagayan de Oro, which includes Cagayan de Oro City and some municipalities and cities of Misamis Oriental and Bukidnon. The region's population density in 2010 was 210 persons per square kilometer. The total population of Region X accounted for about 4.6 percent of the Philippine population in 2015.

Land Ownership and Tenure in Northern Mindanao

Official PSA Statistics in 2000 show that 29.23 percent of the total households in Northern Mindanao region owned agricultural land, of which 3.31 percent of households acquired the land through the Comprehensive Agrarian Reform Program (CARP) while 25.92 percent of the households secured land through other means.

On the other hand, 17 percent of the total households in the region were in possession of residential land other than where the households currently resided and another two percent owned land other than residential and agricultural.

Land Tenure and Use

Community Based Forest Management

As of 2015, 294 Community-Based Forest Management (CBFM) Agreements have been awarded in the region involving 20,922.005 hectares of forestland, and benefitting 28,122 households and 294 people's organizations. The CBFM is a government strategy, which "gives the management of forests back to the people." It offers long-term security of tenure to partner-communities and promotes an integrated approach to sustainable forest resource management.²

¹ Philippine Statistics Office: 2015

² DENR R-X Official Data

Parks and Protected Areas

Region X hosts at least ten (10) Parks and Protected Landscapes. The following sites in the region have been proclaimed by law as protected areas and components of the National Integrated Protected Areas System (NIPAS):³

- Mimbilisan Protected Landscape (Misamis Oriental)
- Baliangao Protected Landscape/Seascape (Misamis Occidental)
- Initao-Libertad Protected Landscape/Seascape (Misamis Oriental)
- Mt. Kitanglad Natural Park (Bukidnon)
- Mt. Kalatungan Range Natural Park (Bukidnon)
- Mt. Malindang Natural Park (Misamis Occidental)
- Timpoong & Hibok-hibok Natural Monument (Province of Camiguin)
- Bacolod-Kauswagan Protected Landscape/Seascape (Lanao del Norte)
- Mt. Inayawan Natural Park (Lanao del Norte)
- Mt. Balatukan Range Natural Park (Bukidnon)

In total, officially proclaimed Parks and Protected Areas in Northern Mindanao cover at least 114,628.03 hectares of land in Region X (see Table 2).

Ancestral Domains

As of 2013, fifteen (15) Certificates of Ancestral Domain Titles (CADTs) have been approved, covering a total area of 242,361.53 hectares. These CADTs have benefitted at least 57,210 rights-holders coming from the various tribes in Region X. Of the 15 CADTs approved, only four have been registered with the Land Registration Authority (LRA) (see Table 3).

In the same period, five (5) Certificates of Ancestral Domain Titles (CALTs) have been approved in Region X. These five CALTs were owned by at least 2,106 rights-holders. There is no information available if any of these CALTs have been registered with the LRA (see Table 4).

³ DENR R-X Official Data

Table 2. Protected Areas and Parks, Region X

Name	Location	Area (hectares)
1. Mimbilisan Protected Landscape	Misamis Oriental	66.0
2. Baliangao Protected Landscape/ Seascape	Misamis Occidental	294.1
3. Initao-Libertad Protected Landscape/ Seascape	Misamis Oriental	3,214.0
4. Mt. Kitanglad Natural Park	Bukidnon	30,642.0
5. Mt. Kalatungan Range Natural Park	Bukidnon	21,301.0
6. Mt. Malindang Natural Park	Misamis Occidental	33,000
7. Timpoong & Hibok-hibok Natural Monument	Camiguin	2,227.0
8. Bacolod-Kauswagan Protected Landscape/Seascape	Lanao Del Norte	9,718.0
9. Mt. Inayawan Natural Park	Lanao Del Norte	4,521.0
10. Mt. Balatukan Range Natural Park	Bukidnon	9,645.0
TOTAL		114,628.1

Conflicting Land Claims and Overlaps in Jurisdiction

Region X is the second most populous region in Mindanao. Its 4,689,302 inhabitants comprise 22 percent of the total population of Mindanao, making it the country’s ninth most populous region. Nearly a quarter of Mindanao’s population try to share space and co-exist in Region X. By 2030, it projected to be the most populous region in Mindanao with at least 6,086,400.⁴

The demands of a growing population, and the very fragile status of the environment, necessitate the need to rationalize the land use of the region. The very current strict competition for land and resources which leads to land conflicts demands an urgency to address issues affecting the delivery of asset reform laws and environmental resource management policies; specifically the mandates of IPRA, CARP, NIPAS, and the CBFM Program.

⁴ PSA/MINDA

Table 3. Ancestral Domain Titles Awarded (as of 2012)

CADT No.	Indigenous Community	No. of Rights holders	Area (hectares)
1. R10-TAL-0703-0010	Talaandig	4,922	11,105.57
2. R10-KIT-0703-0011	Matigsalug-Manobo	24,405	102,324.82
3. R10-QUE-0204-018	Manobo	1,398	1,595.29
4. R10-BAL-1005-036	Higaonon	1,247	14,872.42
5. R10-IMP-1206-054	Higaonon	1,484	14,313.76
6. R10-MLY-0906-049	Bukidnon	1,154	4,536.05
7. R10-MLY-1008-083	Bukidnon	2,867	466.74
8. R10-CLA-1008-084	Higaonon	404	18,028.64
9. R10-ORO-0309-105	Subanen	2360	6,980.00
10. R10-MLY-0309-106	Bukidnon	833	4,203.09
11. R10-IMP-0309-107	Higaonon	237	113.68
12. R10-MLY-0609-110	Bukidnon-Higaonon	8,853	36,464.71
13. R10-CAB-0709-124	Bukidnon Umayamnon	1,483	8,106.13
14. R10-CLA-0709-126	Higa-onon (MAMACILA)	1,977	17,588.28
15. R10-MLY-0110-152	Bukidnon-Pulangiyen	1,586	1,662.35
TOTAL		57,210	242,361.53

Clearly, there is an urgent need to provide information and direction to the State for a mechanism that shall facilitate the harmonization of overlaps in mandate, jurisdiction and resolve policy conflicts.

Joint Administrative Order No. 01 series of 2012

In 2011, a Joint Task Force was established among the DAR, DENR, NCIP and LRA. The main objective was to resolve overlaps in jurisdictional and policy mandates among these respective government agencies. After a year, on January 25, 2012, an agreement was reached to sign and operationalize the Joint Administrative Agreement No. 01 series of 2012 (JAO 01-2012).

The Joint Administrative Order 01-2012 was signed into operation on delineated jurisdiction and policy mandates of DAR, DENR, and NCIP; the conflicts and issues that developed upon the enactment of IPRA; and the

Table 4. Ancestral Land Titles Awarded

CADT No.	No. of Rights holders	Area (hectares)
1. R10-MLI-0906-000142	55	102.7400
2. R10-MLY-0906-000143	67	257.9450
3. R10-OPO-0709-000225	427	52.0000
4. R10-VAL-0110-000249	1,487	944.5276
5. R10-MAR-0210-000259	70	567.7188
TOTAL	2,106	1,924.9314

mechanisms to prevent and resolve the contentious areas and issues at the national and field levels. LRA comes in as the agency overseeing the Registry of Deeds, the government office that administers the Torrens system of registration of real estate ownership in the country and judicially confirms and records all land titles in government archives.

The purpose of the JAO is to facilitate and coordinate the process of registration of the ancestral domain/land titles issued by NCIP with the other titling agencies: DENR-LMB, DAR, and DOJ-LRA to avoid overlap of titles under the registration regime and comply with section 56 of the IPRA to respect prior, existing rights within ancestral domains/lands. The main concern of the JAO is to prescribe a process for the preparation of the map projection to identify titled lands, which might overlap with CADT/CALTs. This information is only available and under the technical jurisdiction of the DENR-LMB. The JAO covers all land tenurial and utilization instruments that are issued by the DAR, DENR, and the NCIP and the registration thereof by the LRA.

The following mandates and jurisdictional limits are given by the JAO to the DENR, NCIP, DAR, and the LRA:

For the DENR:

Their jurisdiction includes all lands of the public domain including those used for agricultural purposes, the forest zone, timberlands, national park, protected areas and mineral lands. The DENR has the main responsibility for the conservation, protection and development of the natural resources and has the authority to issue permits and licenses for the utilization, exploitation, and management of these lands.

For the DAR:

These include all alienable and disposable lands used for agricultural purposes. All lands proclaimed as DAR resettlement sites are distributed by the DAR for qualified beneficiaries. Likewise included are lands under the jurisdiction of other government agencies that have been legally transferred to the jurisdiction and management of the DAR including all agricultural lands owned by the Philippine Government. Similarly, all private agricultural lands regardless of the type of crops that are planted therein are under DAR's jurisdiction.

For the NCIP:

They have jurisdiction over all lands as defined by the IPRA in Sec. 3 (a and b) of RA 8371 on the Definition of Ancestral Domains and Ancestral Lands. Included also are all lands that have been proclaimed as reservations and resettlement areas of indigenous cultural communities.

Operationalization: Implementation Problems of the JAO

The implementation of the JAO has not gone as smoothly as planned. This has been marred by government inertia, ambiguity of who takes the lead, and the limited capacity of frontline implementers of the JAO to perform their expected duties as outlined in the JAO.

In response to the numerous issues raised by affected stakeholders on the very slow implementation of JAO 01-2012, several Regional Directors of the DENR, DAR, LRA, and the NCIP initiated the operationalization of the JAO at the regional level. On 24 June 2015, the new Guidelines for the Operationalization of the Joint Regional Committee of the Administrative Order No. 02-Series of 2102 among the DAR, DENR, LRA, and NCIP was formalized in Butuan City.

The new Guidelines includes an "Operations Manual" which facilitates the creation of a Joint Regional Committee that shall address or resolve conflicts that affect the implementation of the Comprehensive Agrarian Reform Law (CARL), Indigenous People Rights Act (IPRA), Public Land Act, and Land Registration Act/Property Registration Decree in relation to their respective mandates. Furthermore, the Joint Regional Committee shall be conflict-sensitive in order to address the specific needs and issues of

each case and shall take into consideration the particular policies, rules, jurisdictions, and mandates of the concerned agencies.

The Manual contains clear guidelines about the jurisdiction of each of the agency concerned over lands of public domain and ancestral domains. As an example, the Manual states that the “DENR has jurisdiction over all lands of the public domain (i.e. agricultural lands, forest or timber lands, national parks, and mineral lands) except those placed by the law and/ or other issuances under the operation jurisdiction of other government agencies.” Furthermore, the DENR is also responsible for the conservation, management, development, and proper use of the country’s environment and natural resources, as well as the licensing and regulation of all natural resources as provided by existing laws.

Pursuant to Sec. 4 of Republic Act 657 as clarified in Joint DAR-DENR Memo Circular No.9, series of 1995 and Joint DAR-DENR Memo Circular No. 14 and 19, series of 1997, the jurisdiction of the DAR is affirmed in several categories of lands. These are all alienable and disposable lands of the public domain devoted to or suitable to agriculture which were: (1) proclaimed by the President as DAR resettlement projects and placed under the administration of DAR for distribution to qualified beneficiaries under CARP; (2) placed by law under the jurisdiction of DAR; and, (3) previously proclaimed for the use of government departments, agencies and instrumentalities and subsequently turned over to DAR pursuant to E.O. 407 series of 1990, as amended by E.O. 448 and 506 series of 1992.

The DAR also maintains jurisdiction over all lands of the public domain in excess of the specific area limits as determined by Congress in the preceding paragraphs; all other lands owned by the government devoted to or suitable for agriculture; and all private lands devoted to or suitable for agriculture regardless of the agriculture products raised or that can be raised thereon.

The Manual also defines the jurisdiction of the NCIP. These include the following: the recognition of the rights of the ICCs/IPs, agrarian reform beneficiaries and patentees who are ICCs/IPs; adoption of the NCIP guidelines on the indigenous concept of land ownership, oversight and

control of CARP support services for ICCs/IPs; and, the recognition of existing property rights within ancestral domains/lands.

The Manual also provides for the exclusion from the coverage of CARP lands that are actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries, and breeding grounds, watershed and mangroves pursuant to Section 10 of R.A. No. 6657 as amended. In addition, most importantly, the Manual provides specific rules in resolving contentious inter-agency issues.

A Road map for JAO 01-2012

Four years after the signing of JAO 01-2012, a Strategic Plan to strengthen the implementation of JAO 01-2012 was formulated in April 2016. The concerned agencies (LRA, DENR, DAR, and NCIP) in the CARAGA region spearheaded the formulation of the Plan, which aims to achieve the following:

- shared understanding of agency core processes;
- contentious issues jointly resolved;
- cultural sensitivity enhanced;
- increased transparency;
- policies harmonized;
- conflict sensitivity internalized; and,
- fully functional structures in accordance with operational manual.

With support from the COSERAM program of the GIZ, the Strategic Plan for JAO 01-2012 is seen as a catalyst that shall lead towards the peaceful development in target areas served by the four (4) agencies; avoidance or minimization of conflicts in the communities; improved quality of titles to claimants; reduced number of cases related to cancellation of titles; minimized overlapping in titling processes; increased sense of security on land ownership/stewardship; and, minimize/decrease factors dividing people and increase/strengthen connectors that bring people together.

As of the writing of this paper, there is no further data available on the number of Regional JAO committees that have been organized to operationalize it at such level.

CASE STUDY:

The case of the Talaandig of Miarayon in Talakag Bukidnon best illustrates the problems and issues that have arisen in the implementation of JAO 01-2012.

The Talaandig Community of Miarayon

The ancestral domain covers four (4) *barangays* in the Municipality of Talakag, Province of Bukidnon namely *Barangays* Miarayon, Lapok, Lirungan, and *Barangay* San Miguel (*Sitio* Tinaytayan). It is composed of around 2,500 families or 12,000 individuals; of which 90 percent are Talaandigs while the other 10 percent are Dumagats or migrants. A substantial portion of the ancestral domain have now become secondary forests and grasslands due to the unabated expansion of commercial gardens in the area. Aside from these, the ancestral domain is also composed of primary forest, secondary forest, agricultural areas, and residential areas. A recent approximation by the DENR reveals that the ancestral domain is 20 percent primary forest, while the other 80 percent is composed of secondary forests, idle/grasslands, agricultural, and residential areas.

The governance of the ancestral domain is enforced through its indigenous peoples' organization known as the MILALITTRA (Miarayon-Lapok-Lirongan-Tinaytayan Tribal Association). Management and final decision-making rests on its Council of Elders, which also comprise the governing structure of the organization. The organization is a member of the Mt. Kalatungan Range Council of Elders through its Chairperson, *Datu* Rio Besto, as one of the Board of Trustees. Members of MILALITTRA are composed of two thousand five hundred (2,500) families belonging to the Talaandig-Kalatungan ethnic group.

The organization was established in 1993 with the primary aim to regain the ownership of their ancestral territories. In 1997, the organization submitted its application for a Certificate of Ancestral Domain Title (CADT) to the National Commission on Indigenous Peoples (NCIP). In 2004, the NCIP approved the CADT application covering a total of 11,105.57 hectares, a big portion of which is located within the Mt. Kalatungan Range Natural Park.

The forested regions are jointly managed by the community with the Mt. Kalatungan Protected Area Management Board (PAMB), which is a multi-

stakeholder body comprised of local government units (LGUs), tribal leaders, Department of Environment and Natural Resources (DENR), Region X Community Environment and Natural Resources Offices (CENRO), and Non-Government Organizations.

Land Tenure Issues

While the actual area of the MILALITTRA ancestral domain covers approximately 13,000 hectares, only 11,105.57 hectares was approved by the NCIP when it validated the said application for CADT. In the course of the processing of the CADT application, no adverse claimant filed protests during the legally prescribed 15-day protest period; hence, the CADT application was consequently validated and approved by the NCIP Commission en-banc. However, thirteen years after its approval, the CADT has not been registered with the Land Registration Authority (LRA) despite repeated follow-ups by the representatives of the MILALITTRA.

In spite of the approval of the CADT, two outsiders namely Ramon Eleazar and Aberasturi have encroached into the CADT area and have succeeded in physically taking hold of approximately 1,200 hectares of ancestral lands in Tinaytayan, *Barangay* San Miguel. The MILALITTRA was able to physically force Aberasturi out of the CADT area; however approximately 1,000 hectares of land that he has encroached into has yet to be recovered by the rightful Talaandig owners. Without land to till, the affected Talaandigs lost their primary means of living and rightful place inside the ancestral domain. This situation has also been taken advantage of by “lawless elements” in the CADT, which contributed to the breakdown of peace and order in the area.

While the problem with the encroachment of Eleazar and Aberasturi has not been fully resolved, new problems arose in 2014. A full ten years after the approval of the Talaandig CADT, the MILALITTRA representatives found out that several CLOAs (Certificate of Land Ownership Awards) were issued in favor of migrant families. These titles were located within the perimeter of the MILALITTRA CADT. Efforts are now in place to conduct a full inventory of the of the CLOAs recipients and identify their location in the CADT area.

The non-registration of the MILALITTRA CADT is seen by the Talaandigs as a major problem and cause for concern in their efforts to secure full land security over their ancestral domain. Because of this, adverse claimants have repeatedly questioned the credibility of the CADT and the Talaandigs see the recent issuance of CLOAs as a clear manifestation of the non-recognition of the CADT by other government agencies.

As a result, internal tension has arisen within the ranks of the Talaandigs. Due to intense criticism from outsiders, some members have questioned the wisdom of the leadership in going for a CADT and the promise that it shall protect the integrity of the boundaries of the Talaandig Ancestral Domain. This situation has hampered the efforts of the Talaandigs in implementing plans to develop and protect their CADT as they have planned in their ADSDPP. The Talaandigs fear that the non-registration of their CADT will further open the floodgates for the entry of migrants and land-grabbers into their territory. ■

Critique on JAO 01-2012

State of the Indigenous Peoples in the Philippines Address (SIPA)

The very slow registration and approval of CADTs in the country has caused a widespread outcry against the JAO among IP communities in the Philippines. This has been repeatedly articulated in the State of the Indigenous Peoples Address of the Philippines (SIPA). Since 2008, the SIPA is an annual national gathering of indigenous peoples to present to the Filipino people their true state and plight. The SIPA is delivered in July of each year as a parallel declaration to the State of the Nation Address (SONA) of the President of the Philippines. It provides a venue to indigenous peoples in the Philippines to air their own perspective of their prevailing plight and condition.

For the past three years, the effects of the implementation of JAO 01-2012 has been consistently identified as an issue that severely affects land rights of IPs. The main objections, grievance and demands of the IP communities as articulated in the SIPA are summarized as follows:

- The loss of ancestral lands continues in spite of the IPRA due to the very slow implementation of the law. This is further exacerbated by the JAO as it thickens the already very sluggish bureaucratic process that has further delayed the CADT titling process.
- The JAO has illegally and arbitrarily removed the powers of the NCIP under the IPRA to validate, approve, and issue CADTs to qualified indigenous communities.
- The delay in CADT processing and non-registration of CADTs caused by the JAO has made ancestral domain/lands very vulnerable and facilitated the further encroachment into IP territories by: a) the DAR through the issuance of CLOAs without coordination with NCIP; b) the DENR through CBFMAs, IFMAs, FLEGT, PLAs, and by allowing entry of mining corporations, large scale plantations, and the National Greening Program; and, c) the LRA through Torrens Titles over portions of ancestral domains/lands.
- The IPs demand the repeal and nullification of DAR-DENR-LRA-NCIP JAO 01 series of 2012. They further demand accountability from the government officials who have allowed the grabbing of their ancestral lands and the killings of indigenous leaders because of the JAO.

Regional Dialogue on Overlapping Land Claims (20 June 2017, Cagayan de Oro City)

In a policy dialogue jointly organized by ANGO, the Archdiocese of Cagayan de Oro, BALAOD Mindanaw, Xavier Science Foundation, Institute of Land Governance, and PAFID through the JALR Project, issues and problems that have arisen from the implementation of the JAO were discussed. Representatives of IP communities affected by the implementation of the JAO along with other concerned CSO representatives raised the following comments, issues, and challenges:

- They know very little information about the JAO, on how it is implemented, what has been done, and how it helps resolve the conflicts.
- They observed that of the concerned agencies in JAO 01-2012, it seems that only the NCIP has heeded the order to hold in abeyance the processing of tenurial instruments.

- The JAO has forced the IPs to incur additional expenses in following-up the status of their CADTs. Moreover, it has caused tremendous delay in the processing of their AD/AL claims.
- The prescribed step of “projection” of the CADTs’ survey plans over the maps of the DENR and DAR has taken years way beyond what is stated by the JAO. This delay has allowed other interested parties to encroach on their lands.
- The slow processing and approval of CADTs and non-registration of approved CADTs have caused confusion and have weakened their capacity to effectively govern and protect their ancestral domains.

Effects of JAO 01 to Indigenous Communities

The purpose of JAO was to facilitate and coordinate the process of registration of the ancestral domain/Island titles issued by NCIP with the other titling agencies: DENR-LMB, DAR, and DOJ-LRA to avoid overlap of titles under the registration regime and comply with IPRA section 56: to respect prior, existing rights within ancestral domains. The main concern was for the preparation of the Map Projection to identify titled lands, which might overlap with CADT/CALTs.

An appreciation of the case of the Talaandigs of Bukidnon and the critique and complaints coming from the SIPA, and the Northern Mindanao dialogue clearly show that the JAO has not been faithful to its mandate and has not resolved land issues and may have even contributed to further land insecurity among affected IP communities. The effect of the JAO has been injurious to the rights of IP groups. The JAO has created a regime, which frustrates the registration of CADT/CALTs with the local Registry of Deeds rather than facilitating it. It is worthy to note that since the approval of the JAO in January 2012; nearly six years ago, very few and almost no CADT/CALTs throughout the country have been registered under it.

The JAO has resulted into further marginalization of the IPOs. The IPOs still are struggling to come up with strategies to resolve these agency-jurisdiction contested areas, realize the registration of their CADTs/CALTs, and finally have their CADTs/CALTs awarded. In the case of the MILALITTRA of Bukidnon, they have not been able to fully implement their ADSDPP because they have to devote more time and resources in following-up

the registration of their CADT. This should not be the case if the JAO was functional. Rather, the affected IPs should be able to devote their energy and time to positive activities: to improving their management over their CADT, developing their ancestral domain and livelihoods, and to facing existing threats of encroachment of illegal logging in forested areas and illegal cattle pastures in grasslands.

The non-registration of the CADTs has fostered a negative attitude between and among local and national government units concerning ancestral domain rights. The never-ending prolonging of the registration and awarding of the CADT has undermined the indigenous peoples' rights to self-determination over their ancestral domain/land. It has encouraged other groups and government agencies to disregard or selectively respect the rights of the IPs to their CADT area.

Encroachment into the CADT areas has intensified. In Miarayon, the non-registration of the CADT has emboldened neighboring lowlander, non-IPs to intensify continuing illegal extraction of lumber from the remaining forests and charcoal from woodland areas. Several cases of lowlanders purchasing land or house lots from Talaandig individuals in contravention of the Talaandig ADSDPP and IPRA law have recently occurred. This has been difficult to address because the Talaandig leadership has been unable to prove that the CADT is titled and registered to the IPs.

Analysis of Issues and Problems of Implementation of JAO 01

- The guidelines set forth in the JAO for the preparation of Map Projections was a main objective to streamline the process of CADT/CALT registrations. However, rather than facilitate the preparation of Map Projections, the JAO has resulted into a bureaucratic gridlock that has impeded AD registration by withholding the necessary information from the NCIP and therefore blocking the registration process with the LRA.
- A Map Projection is merely a technical process to indicate possible overlaps of titled properties, government reservations, and permits. This is public information. A Map Projection makes no decisions or judgments as to whether the titled properties, government reservations, or issued permits should be excluded and/or segregated

from ancestral domains or just indicated in a CADT survey plan. IP communities are being denied even the right to know what titled lands or government reservations or permits might be overlapping with their ancestral domains/lands. The JAO since 2012 has not fulfilled this main objective. IP groups consistently complain that the production of Map Projections has not been forthcoming.

- “RESERVED OR INTENDED FOR THE COMMON AND PUBLIC WELFARE AND SERVICES” Government Reservations: IPRA Section 7(g) stipulates that IPs have the right to claim parts of lands set aside for specific purposes, i.e. reservations, but makes an exception of excluding areas “reserved or intended for the common and public welfare and services.” The JAO broadly defines government reservations as being in their entirety all for the common and public welfare and services --JAO Section 3(h). It therefore mandates the total exclusion/segregation of these reservations from AD. This is illegal. The JAO cannot contradict the law: which allows IPs to claim parts of reservations. The JAO could provide guidelines to determine what portions of reservations are for the common and public welfare and services to be excluded from CADTs and which are not. Nevertheless, to exclude them all is overriding a main clause of the IPRA law.
- There is denial of other IPRA Rights over ancestral domain which are not contained in Torrens Titles. The JAO completely overlooks these, therefore denying IP groups of their rights to jurisdiction and control over ADs/ALs which are not granted in titled properties: namely rights to and authority over the following: a) natural resources; b) determination of land-use [zoning under ADSDPPs]; c) responsibility for the protection of the environment; and, d) control of migrants and other outsiders (NGOs) into the CADT/CALT area.
- Normally the authority to determine these lie with the DENR and Local Government Units. A holder of titled property does not have ownership or control over natural resources, nor authority to determine land-use/zoning, responsibility of environmental protection, and control of migrants. IPRA transfers this authority from LGUs and the DENR to the IP group with a CADT. The JAO denies the IP group this authority by completely excluding them from the ancestral domain. For example, a pocket of some 100 hectares of privately titled lands within a CADT is clearly owned and cultivated by the titleholders. However according to IPRA, the IP group has rights over the minerals therein or to determining

the land-use zoning and not the titleholders. If a municipality wishes to purchase five hectares of titled land within a CADT for a garbage dump, IPRA states that the IP group must first consent. The JAO denies the IP group of clearly stated IPRA rights and authority by removing these titled lands from the IP group's jurisdiction.

- The JAO does not include CADCs as under NCIP jurisdiction. Not including DENR-issued CADCs/CALCs as areas under the jurisdiction of NCIP is another major legal flaw of the JAO. IPRA specifically refers to areas covered by the implementation of DENR-DAO 02, 1993 as being government recognized ancestral domains and must be automatically considered as under NCIP jurisdiction.
- Certification of Non-Overlap (CNO) regime is discriminatory against NCIP jurisdiction protecting IP land rights. CNOs are required in the JAO from DENR-DAR-LRA for registration of CADT/CALTs issued by NCIP in contested areas. However, no equivalent CNO is required from the NCIP for the registration of titles issued by DENR-DAR-LRA in these same contested areas.
- DAR reservations are mistakenly declared as areas “for the common and public welfare and services” which have to be excluded from CADTs. This is illogical and is a contradiction of terms for the JAO to automatically exclude all DAR reservations from ancestral domains based on the clause “except for areas for the common and public welfare and services.” The distribution of land by DAR to individual beneficiaries and the granting of CLOA titles removes land from the public domain to become privately owned land by the CLOA holder. The land is no longer for the common and public welfare and services when it has been distributed as private land. The clause is a legally flawed convenience to prevent the JAO from any possible restraint of DAR jurisdiction.
- There is no legal basis for exclusion/segregation of approved survey plans from ancestral domains. The JAO excludes all approved survey plans from ancestral domains. An approved survey plan is merely a technical instrument to identify the location on the ground of plots of land. It does not convey any type of rights of ownership or control over these land areas and is not subject to IPRA Sec. 56 prior existing rights regime.
- The required stamping of CADTs with “subject to IPRA Sec. 56” undermines the purpose of the JAO and the concept of the perfection

and indefeasibility of titles. The JAO was issued to establish a common policy for the processing of the registration of CADTs to ensure that all adverse claims have been properly vetted and resolved before registration – as occurs in the process of the issuance of Torrens titles. The JAO’s requirement to stamp the CADT with the IPRA Sec. 56 clause implicitly reflects that there is no confidence in the process that the JAO is supposed to establish and the result will be somehow be flawed. Furthermore, there is an innate bias being created by the JAO that a registered CADT/CALT title is not perfected and not indefeasible as a registered Torrens title is.

RECOMMENDATIONS

The following recommendations are then put forward to address the issues presented in this review:

1. Conduct an immediate review of JAO 1 series of 2012. Assess if the JAO has a) served its purpose, is it still necessary, b) efficiency of implementation, and c) impacts on communities.
2. Enforce the production of Map Projections as an automatic process for all CADTs/CALTs within a defined period. Provide funding within the NCIP or between NCIP and DENR for the outsourcing of the production of Map Projections with private geodetic companies and include monetary incentives for quick and accurate accomplishments.
3. Override the JAO with the issuance of an Executive Order which addresses all the issues/comments raised above.
4. The NCIP must recognize IPRA’s other rights: jurisdiction rights to natural resources, zoning authority, and control of entry of migrants through the issuance of a separate certificate and NCIP registration recognizing such authority i.e., a Notice of Jurisdiction. These would cover areas of the CADT, which overlap with private titled lands, or existing reservations or permits; and would not conflict with the land registration regime, which is limited to property rights of ownership under the Torrens system over titled lands. The CADTs/CALTs would

still be registered with the RODs but with the titled lands excluded/ segregated.

5. To make the JAO more responsive; the following items should be added:
 - a. In addition to areas already listed, the jurisdiction of NCIP shall include all existing DENR-issued CADCs and CALCs.
 - b. Requirement for a counter Certificate of Non-Overlap or CNO issued by NCIP before registration of DENR/DAR/LRA-issued titles in areas of contested jurisdiction –overlaps with ancestral domain/lands.
 - c. Prohibition for the DENR-CENRO to issue “Survey Approval” to DAR or DENR surveyors or contracted surveyors in areas overlapping with ancestral domain without approval of the NCIP.

6. The following provisions must be removed to improve the JAO:
 - a. Exclusion/Segregation of Approved Survey Plans from ancestral domains under the false declaration that DAR reservations are “for the common and public welfare and services” and therefore must be excluded/segregated from ancestral domain/lands.
 - a. Stamping of CADTs/CALTs with IPRA Sec. 56 clause, which only undermines the CADT and serves no purpose. ■

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Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC)

Founded in 1979, ANGOC is a regional association of national and regional networks of non-government organizations (NGOs) in Asia actively engaged in food security, agrarian reform, sustainable agriculture, participatory governance, and rural development. ANGOC network members and partners work in 14 Asian countries with an effective reach of some 3,000 NGOs and community-based organizations (CBOs). ANGOC actively engages in joint field programs and policy debates with national governments, intergovernmental organizations (IGOs), and international financial institutions (IFIs). ANGOC is the convener of the Land Watch Asia (LWA) campaign. ANGOC is also a member of the International Land Coalition (ILC), the Global Forum on Agricultural Research (GFAR) and the Global Land Tool Network (GLTN).

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Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (BALAOD Mindanaw)

BALAOD Mindanaw is a non-stock, non-profit legal resource institution providing capacity-building and legal services to its partner communities on resource tenure and other justice issues primarily in Mindanao. It was formally established and registered with the Securities and Exchange Commission (SEC) on 11 August 2000 through the efforts of a small group of individuals, lawyers, paralegals and community organizers.

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Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan [Solidarity Towards Agrarian Reform and Rural Development, Inc. (Kaisahan)]

Kaisahan is a social development organization promoting a sustainable and humane society through the empowerment of marginalized groups in rural areas, especially among farmers and farmworkers, to undertake their own development, participate fully in democratic processes and demand their rightful share in the stewardship of the land and the fruits of their labor.

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People In Need (PIN)

The People in Need (PIN) organization was established in 1992 by a group of Czech war correspondents who were no longer satisfied with merely relaying information about ongoing conflicts and began sending out aid. It gradually became established as a professional humanitarian organization striving to provide aid in troubled regions and support adherence to human rights around the world. Throughout the 25 years of its existence, PIN has become one of the biggest non-profit organizations in Central Europe. In addition to humanitarian aid and human rights, it now also targets education and helps people living in social exclusion. PIN is part of the Alliance2015, a strategic network of seven European non-governmental organizations engaged in humanitarian aid and development projects. This collaboration increases effectivity both in working in the target countries and in campaigns aimed at influencing the attitudes of politicians and the general public in Europe.

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