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Addressing Land and Resource Conflicts

A Case Study of Bunawan, Agusan del Sur

Gustave Heinemann Citizens' Price 1997 Göttingen Peace Price 2005 Peace Prize 'Sieverhaüser Ermutigung' 2014

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BMZ Federal Ministry for Economic Cooperation and Development

Ziviler Friedensdienst
Civil Peace Service
We don't shy away from conflict.

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Abbreviations

ADSDPP	Ancestral Domain Sustainable Development and Protection Plan
ANGOC	Asian NGO Coalition for Agrarian Reform and Rural Development
BIR	Bureau of Internal Revenue
BMADMCI	Bunawan Manobo Ancestral Domain Management Council, Inc.
BTCDBI	Bunawan Tribal Council of Datus and Baes, Inc.
CA	Commonwealth Act
CADT	Certificate of Ancestral Domain Title
CALT	Certificate of Ancestral Land Title
CARL	Comprehensive Agrarian Reform Law
CARP	Comprehensive Agrarian Reform Program
CARPER	Comprehensive Agrarian Reform Program Extension with Reforms
CBFM	Community-Based Forest Management
CENRO	Community Environment and Natural Resources Office
CLOA	Certificate of Land Ownership Award
CSO	Civil Society Organization
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
DOF	Department of Finance
EO	Executive Order
FPIC	Free, Prior, and Informed Consent
FTAA	Financial and Technical Assistance Agreement
GIZ	Gesellschaft für internationale Zusammenarbeit (German Agency for International Development)
IP	Indigenous Peoples
IPRA	Indigenous Peoples Rights Act
JAO	Joint Administrative Order
LGU	Local Government Unit
LRA	Land Registration Authority
MGB	Mines and Geosciences Bureau
MOA	Memorandum of Agreement
MPSA	Mineral Production Sharing Agreement
NCIP	National Commission on Indigenous Peoples
PASAKK	Panaghiusa Alang sa Kaugalingnan Ug Kalingkawasan, Inc.
PD	Presidential Decree
RA	Republic Act
SCAA	Special Civilian Action Forces Geographical Unit Active Auxiliary
USAID	United States Agency for International Development

Introduction

Land and resource conflicts make up a significant part of the conflict landscape in the Philippines. They are deeply intertwined with a range of other types of conflict, such as those related to violent extremism or the decades-old communist insurgency. These conflicts further relate to structural forms of violence common in the Philippines such as patronage systems of power, the marginalization of Indigenous Peoples, and significant economic inequalities and dependencies. As in other parts of the world, land and resource conflicts are often of a protracted nature, resulting from histories of colonization, displacement, and incoherent land and resource governance. These are particularly pronounced in the Southern Philippine region of Caraga, which is rich in resources, inhabited by a diversity of Indigenous Peoples, and one of the primary areas of conflict between the insurgent New People's Army and the Philippine government. Indigenous communities, despite having occupied large parts of the region from time immemorial, are particularly affected by these conflicts leading to a gradual loss of control over their ancestral lands and further marginalization, both politically and socio-economically.

Forum Ziviler Friedensdienst (Forum Civil Peace Service or forumZFD) has been engaging with Indigenous communities in Caraga, and particularly the province of Agusan del Sur, for over 10 years. Through this engagement, forumZFD has documented how its partner organizations and communities have been affected by land and resource conflicts, how Indigenous conflict resolution practitioners, such as those conducting traditional husoy, have addressed these conflicts, and the many gaps that remain. To better understand these gaps and how to fill them, forumZFD set out to further analyze land and resource conflicts, starting with the case study of Bunawan, Agusan del Sur, and to map out existing conflict resolution mechanisms as well as mechanisms that aim to address the root causes of land and resource conflicts. The mapping is intended to facilitate a more comprehensive understanding of the conflict and conflict resolution landscape for the government agencies implementing these conflict resolution mechanisms, Indigenous partner communities affected by and responding to land and resource conflicts, and non-government organizations intervening in this complex context. It explores the question of why land and resource conflicts remain largely unaddressed despite the plethora of conflict resolution mechanisms available, both from the Indigenous governance system and the state bureaucracy.

To do so, the report first lays out the context of land and resource conflicts in the Philippines including an overview of the history of land governance in the archipelago and an analysis of the main factors for conflicts and their effects. Second, the report delves into the specific situation in Bunawan, Agusan del Sur. A study of the types of land and resource conflicts present in Bunawan is presented based on forumZFD's long-term engagement in the municipality, previously conducted conflict analyses, community consultations, and the insights of the research's advisory group. This is followed by a mapping of conflict resolution mechanisms that aim to address land and resource conflicts. An overview of the application of Indigenous conflict resolution mechanisms as part of the exercise of self-determination

serves as the background for a more detailed assessment of available conflict resolution mechanisms offered by state agencies. Next, available mechanisms to address the root causes of land and resource conflicts as identified in the conflict analysis are discussed in terms of their suitability to contribute to the transformation of the broader context of land and resource conflicts. Based on the analysis of land and resource conflicts, the mapping and assessment of conflict resolution mechanisms, and the discussion of measures taken to address underlying root causes, the report then identifies four main factors contributing to the mismatch between conflict resolution mechanisms and the continuing land and resource conflicts. It ends with a presentation of entry points and recommendations for civil society engagement.

Methodology

The research project is part of the applied peace research conducted by forumZFD. It is embedded in forumZFD's conflict transformation work and draws on experiences made in the context of its projects. Particularly, this research builds on experiences forumZFD has made in the context of its work with Indigenous leaders conducting traditional conflict resolution or *husoy*. The objective of this project, called *Manghuhusoy*, is to accompany these leaders, facilitate peer learning, and complement Indigenous methods of conflict transformation with additional tools or skills where necessary. As part of the accompaniment and peer learning, several conflict analyses and community consultations were conducted that revealed the prevalence of land and resource conflicts, informed the motivation of the research project, and built the basis for the analysis of land and resource conflicts in Bunawan.

The report draws on a qualitative analysis of the conflicts in Bunawan jointly developed by forumZFD and its partner organization Panaghiusa Alang Sa Kaugalingnan Ug Kalingkawasan, Inc. (PASAKK) in February 2018. Utilizing the method of a Systemic Conflict Analysis, the participants identified factors for conflict, factors for peace, and relevant actors in a three-box-analysis; mapped out relationships between these actors using actors mapping; analyzed the actors' attitudes, behavior, and context along the ABC method; and traced the needs and fears of the actors. The report then draws on two rounds of consultations conducted with community members in Bunawan in September 2018 and May 2021. The community consultation conducted in 2018 brought together Indigenous leaders from the barangays[1] of Bunawan Brook, Poblacion, Mambalili, Consuelo, San Marcos, and San Teodoro. Rather than focusing on land and resource conflicts specifically, the consultation was intended to identify ongoing conflicts, which brought up a number of land and resource-related conflicts. The 2021 community consultations, on the other hand, were conducted in the barangays of Poblacion, Mambalili, and San Marcos and aimed to document lived experiences of those affected by land conflicts, specifically by overlapping titles and unclear ownership or boundary status. The consultations were conducted by barangay and were each attended by between 6 and 14 community members, which included purok[2] or barangay officials.

Based on these experiences, the report analyzes why land and resource conflicts in Bunawan remain unaddressed despite the plethora of conflict resolution mechanisms available. To do so, it draws on a review of relevant literature on land and resource conflicts, their dynamics, and effective avenues of addressing them both on an international level and in the specific context of the Philippines and Agusan del Sur. By means of the literature review, the research team identified relevant state mechanisms available in the Philippines to deal with land and resource conflicts. This was followed by a review of the laws and policies that govern these mechanisms to understand how they are conceptualized and what processes are prescribed by the relevant legislation.

Finally, the research team conducted interviews with staff of the identified agencies who are tasked with implementing the conflict resolution mechanisms offered. This was done to understand the dynamics of their implementation in practice and identify potential discrepancies between the prescribed processes and their application. Interviews were conducted by the lead researcher, an international forumZFD staff member, with at least one local co-researcher from forumZFD's team working in Caraga. Throughout the

1 A 'barangay' is the smallest administrative unit in the Philippines.
2 A purok is an informal division within a barangay, usually headed by a purok leader. It is not an official local government unit but often relied on to deliver information or services from the barangay level.

data gathering, the co-researchers were able to draw on their experiences of working more closely with the Indigenous partner communities. Their presence allowed research participants to express themselves in the language most comfortable to them, whether English, Filipino, or Bisaya. The interviews were conducted in a semi-structured way using interview guides that featured both general questions and questions specifically tailored to the respective government agency. With the consent of the interviewees, they were recorded, transcribed, and translated into English, where necessary. The research team conducted eleven interviews with a total of 18 interviewees, including 11 male and 7 female respondents. Respondents were identified using purposive sampling based on their role in conducting conflict resolution at their respective agencies or their functions. Interviewed agencies included the Department of Environment and Natural Resources (DENR), the Department of Agrarian Reform (DAR), the National Commission on Indigenous Peoples (NCIP), the Department of Interior and Local Government (DILG), the Land Registration Authority (LRA), the Commission on Human Rights (CHR), and the Regional Trial Court (RTC) in Trento. The provincial Indigenous Peoples Mandatory Representative was also interviewed. Five interviews were conducted online and one via email to accommodate travel restrictions and limitations in terms of the interviewees' availabilities. The remaining five interviews were conducted in person in a location convenient to the interviewees, in most cases their respective offices.

Based on the analysis of the underlying factors for land resource conflicts and corresponding insights regarding what would be needed to make conflict resolution mechanisms more effective to address the overall conflict context, the research team developed criteria that constitute an effective conflict resolution mechanism and tested the existing mechanisms and their implementation in practice against this set of criteria. Identified criteria included accessibility, respect for Indigenous Peoples' rights, and availability of measures preventing abuse by powerful actors. The transcripts were then analyzed based on pre-identified criteria.

In line with forumZFD's aspiration of conducting its applied peace research in a community-based and participatory manner whenever feasible, the research project was accompanied by an advisory group composed of representatives of forumZFD's partner organization PASAKK. The role of the advisory group was to ensure the relevance of the research project to the community throughout the process and maintain conflict-sensitivity of the research design by alerting the researchers of any unintentional harm that may be done throughout the data gathering phase. By regularly checking in, the advisory group maintained co-ownership of the research process even though inequality between the resources available to researchers and the advisory group meant that the majority of the workload remained with the researchers of forumZFD. In practice, the advisory group exercised their role by validating identified conflict categories, co-identifying interviewees for the field research, co-designing the data-gathering process, and providing a reality check on the findings.

The research project was accompanied by an advisory group composed of PASAKK members.

The main challenge and limitation encountered by the research project was the difficulty of setting up interviews with representatives of the relevant line agencies. Due to COVID-19-related restrictions, natural disasters, and the limited availability of interviewees, the data-gathering phase experienced significant delays resulting in interviews being conducted over three years, between 2021 and 2023. While the overarching processes and conflict lines under review have remained the same, some changes in the context throughout the data-gathering phase may be reflected in some interviews but not others. The continuous exchange with forumZFD's partner organization who experience the conflicts and engage with line agencies on a permanent basis constitutes a mitigating factor in this regard.

Conflict Lines and Dynamics of Land and Resource Conflicts

1. Context of land and resource conflicts in the Philippines

Land and resource conflicts are one of the most common forms of conflict in the Philippines and include conflicts over access to, control over, and distribution of natural resources. This is particularly true in Mindanao, where land has been described as a "root cause of persistent conflict" (Bolton & Leguro, 2015, p.5). 59% of the 352 land conflicts documented by the NGO Asian NGO Coalition for Agrarian Reform and Rural Development (ANGOC, 2019) in the period between January 2017 and 2018 were located in Mindanao[3]. Individual land- and resource-based conflicts can be latent or manifest and, when not resolved, often escalate into physical violence. Almost a quarter of all land conflicts documented by ANGOC led to the killing of at least one of the actors, with violence often committed by the military or a private armed group. In 2018 alone, 30 land and environmental defenders were killed in the Philippines making it the highest number worldwide in that year (Global Witness, 2019). Other manifestations of violence in the context of land conflict include enforced disappearances, forcible evictions, destruction of property, legal harassment, and other forms of intimidation (ANGOC, 2019). Additionally, the highly unequal distribution of land is closely intertwined with power asymmetries and unequal access to livelihood opportunities, resources, and services. Cases of direct violence committed as part of land conflicts and the structural violence inherent in the unequal distribution of land do not exist independently of each other but should be considered mutually reinforcing. Existing and often longstanding land and resource conflicts are exacerbated by increasing pressure on land through urbanization, growing agricultural, logging, and mining investments, and the loss of fertile or otherwise available lands through climate change and unsustainable land uses (ANGOC, 2019; GIZ, 2019; USAID, 2004).

The following section defines and discusses land and resource conflicts in the context of the Philippines. It looks at the root causes by laying out the history of land governance from pre-colonial concepts of land ownership to contemporary tenurial arrangements. Building on this historical overview, it identifies the dominant factors for land and resource conflicts in the Philippines and Mindanao in particular. This is followed by an analysis of land and resource conflicts in Bunawan, Agusan del Sur, as identified by the Indigenous People's organization PASAKK.

Land and resource conflicts are defined as a "situation where two or more stakeholders compete for control over the use, decision-making, and transfer of land and resource rights"[4] (ANGOC, 2019, p.108). The nature of land conflicts varies greatly and can be categorized according to the types of land, the object of the conflict, the legitimacy of actions taken, or the level of violence[5]. Common types of conflict, as seen in a variety of conflicts in the Philippines, include ownership conflicts due to legal pluralism or lack of land registration, conflicts over land boundaries, transfer or use of land, evictions, disputes over revenue generated on the land, and forcible entry of corporations (Wehrmann, 2008).

3 This number does not include land conflicts caused by internal displacement due to natural disasters or armed conflict (ANGOC, 2019).

4 An alternative but similar definition is given by Wehrmann: "a social fact in which at least two parties are involved, the roots of which are different interests over the property rights to land: the right to use land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to compensation for it" (2008, p.9).

5 Wehrmann (2008) presents 4 categories of land conflicts with 35 types and 50 subcategories spanning from 'intra-family conflicts' to 'violent land acquisition'.

ANGOC's 2019 study found that the majority of land and resource conflicts documented in the Philippines were between communities and corporations (48%), followed by conflicts between community members (36%), and between community members and the state (16%). In other situations, land may not be the source of conflict but serves as an aggravating factor or land-related issues arise as an effect of other conflicts (USAID, 2004).

1.1 History of land governance

Land conflicts in the Philippines are commonly attributed to the complex and conflicting nature of land governance and related historical injustices committed in the Philippines' history of colonization, occupation, and elite control. Land governance is defined as "rules, processes, and structures through which decisions are made about access to land and its use, the manner in which decisions are implemented and enforced, the way that competing interests in land are managed" (Palmer et al., 2009, p.9). As such it includes both norms and practices, formal and informal structures, state-regulated policies as well as traditional bodies and practices. Understanding land governance entails comprehension of power, the political economy of land, the interaction between different normative and regulatory systems, and the distribution of incentives and constraints (Palmer et al., 2009). In the Philippines, the evolution of different concepts and systems of land ownership as well as the legal pluralism complicating contemporary land governance play an important role in the analysis of current conflicts including those affecting and addressed by forumZFD's partner organizations.

Much of the remaining untouched tropical forest is found on the islands of Palawan and Mindanao

1.1.1 Precolonial land governance

Prior to Spanish colonization, land was owned collectively by a community or family. These large lands were then often managed by a local chieftain or *datu* and were transferable through barter, purchase,

inheritance, or as a security for debts (Bolton & Leguro, 2015; CELPA, 2019). In some parts of Mindanao, sultanates were the most complex form of political organization with subordinated systems of family clans providing structures for organizing farming, trade, and self-defense (Lara, 2010). As seen below these customary systems of collective land ownership conflict with the concept of formalized titles for private, individual property later introduced in the Philippines (Bolton & Leguro, 2015). Nevertheless, some of these traditional land governance systems are still practiced by Indigenous Peoples, are subject to special protection mechanisms under the umbrella of Indigenous Peoples' rights, and stand in constant tension with the state claiming sole authority in land governance.

1.1.2 Spanish Colonial Rule: The Regalian Doctrine

Traditional concepts of land ownership were largely replaced when Spain colonized the Philippines. With the introduction of the Regalian Doctrine, all lands were claimed by the Spanish Crown irrespective of previous ownership structures. Those who previously freely availed of their land became land tillers, lessors, or landholders and had to pay colonial tributes to the Crown (CELPA, 2019). Additionally, resource extraction as private accumulation began to take hold during Spanish colonial times making natural resources a commodity for private corporations (Holden et al., 2011). Thus, the replacement of Indigenous modes of reciprocity with capitalist modes of resource commodification built the foundation for the displacement of Indigenous Peoples from their lands (Holden et al., 2011; Lara, 2010). Spanish colonialists also introduced feudal systems parceling large areas of land into haciendas owned initially by members of the clergy and military who profited from systems of tribute and forced labor (ANGOC, 2019). Colonial documents and titles regulating these large areas of land were in the colonizer's language and therefore largely inaccessible to the people who had originally owned the land communally (Lara, 2010). While the Spanish introduced laws to regulate the acquisition and transfer of land, these were never comprehensively implemented (CELPA, 2019).

1.1.3 The US-American Insular Government: Introducing the Torrens System

When the US took control of the Philippines in 1898, the Spanish land governance system was replaced by the US Torrens title system which declared all unregistered and untitled land as public lands irrespective of actual occupancy. Due to the lack of comprehensive surveys and implementation of

land laws during the Spanish era, untitled lands were manifold and included lands long occupied and cultivated. Promoting private ownership as the main tool to agricultural development, the US-American government passed laws to allow actual occupants to buy the lands previously assigned to friars and to confirm so-called imperfect titles of long-time occupants (CELPA, 2019). While narrow segments of the population thus benefited from the introduction of the Torrens title system, it meant large-scale dispossession for Indigenous Peoples and the Muslim population in Mindanao. When Spain ceded the Philippines to the US through the Treaty of Paris it included land areas never fully brought under Spanish control. Territories populated by non-Christian peoples or not populated at all were determined at approximately half of the total land area at that time (Worcester, 1914). The US-American Insular Government then formally declaring all titles granted by Indigenous leaders as void[6] has been described as "legaliz[ing] the first act of wholesale land grabbing" (Rodil, 2021a, para. 10). The Torrens title system continued to exclude Indigenous forms of land ownership by not accounting for communally owned land, requiring written titles, and prescribing differing sizes of land for homesteads (up to 24 hectares at times) and land within Indigenous reservations (up to 4 hectares) (Act No. 2874; Commonwealth Act No.141; Rodil, 2021b). Indigenous Peoples who did not submit to such discriminatory registration and titling requirements but continued to practice their customary forms of communal land stewardship were gradually dispossessed and displaced from their lands (Lara, 2010).

US colonialists also pursued natural resource extraction more determinedly than the Spanish and facilitated the entry of foreign companies in logging, mining, and large plantations (ANGOC, 2019; Lara, 2010). Large resettlement programs from Luzon and Cebu to Mindanao were pursued under the explicit[7] objective of increasing productivity, developing "new money crops" and encouraging migration to "sparsely populated regions" (Commonwealth Act No. 441). On top of this, it is estimated that an even higher number of people migrated to Mindanao outside of formal resettlement channels (Rodil, 2021c).

1.1.4 Contemporary land governance

Contemporary Philippine land governance continues to be characterized by its colonial history featuring a plethora of different and overlapping tenurial instruments, some of which have been retained from before independence. The main tenets of the Regalian Doctrine remain in the form of a constitutional provision stating that all lands and natural resources are property of the state—a general rule that may have an exemption only in native titles possessed by Indigenous Peoples before colonization.[8] At the same

6 In fact, in 1903 the Philippine Commission passed a specific law to this effect titled "An Act Making Void Land Grants from Moro Sultans or Dattos or from Chiefs of Non-Christian Tribes When Made Without Governmental Authority or Consent" (Act No. 718).

7 While this was the objective officially stated in legal texts, historians argue that the settlement program was pursued for counterinsurgency purposes as well and was a means to quell the Muslim armed resistance to US American rule at that time (Rodil, 2021d).

8 This legal opinion was advanced by some of the Supreme Court Justices in relation to a petition attempting to declare the Indigenous Peoples Rights Act unconstitutional. It argues that possession of lands under a claim of ownership that precedes and is independent of Spanish conquest are an exemption to the Regalian Doctrine in that the lands were never public lands (USAID, 2017).

time, the Torrens titling system continues to be practiced under the 1903 Land Registration Act (USAID, 2017). Titles can be issued by administrative or judicial process, but there is still no comprehensive land titling program, no complete cadastral maps showing titled lands, and existing processes are hampered by onerous evidentiary requirements placed on the applicants[9] (CELPA, 2019; USAID 2017). Rights to land ownership and use can be acquired through public grants (e.g. land patents, land distribution programs), operation of law (e.g. by prescription, inheritance, marriage), or by private transactions on privately

OVERLAPS IN FUNCTIONS

Function	Agencies
Land classification as alienable & disposable	NCIP, DENR
Land surveys	DENR, DAR, NCIP
Award of ownership in land	DENR, DAR, NCIP, Courts, LRA
Valuation for tax	DOF, BIR, LGU

Source: CELPA, 2019

owned land (USAID, 2017). Public grants also include the homesteads in Mindanao that were awarded to peasants from Luzon and Visayas under several large-scale resettlement programs, often encroaching on lands already cultivated by Muslim communities and Indigenous Peoples (CELPA, 2019).

In the present-day Philippines, a multitude of agencies are tasked with the registration, distribution, and administration of land. These include the Land Registration Authority (LRA), the Department of Agrarian Reform (DAR), the Department of Environment and Natural Resources (DENR), and the National Commission on Indigenous Peoples (NCIP) (Bolton & Leguro, 2015). Overlaps in functions and a lack of coordination between these agencies often result in the issuance of conflicting titles, land use patents, or even maps and prevents the easy detection of conflicts (USAID, 2017).

As a resource, land is managed by the DENR which is tasked with issuing tenurial instruments, patents, and permits on public lands. These public lands are classified into national parks, timber, mineral, and agricultural lands. Only agricultural land that is classified as alienable and disposable[10] can become privately owned land. Other lands of the public domain such as timber and mineral lands can be leased or subject to resource use permits as provided for by specialized laws. For example, tenure instruments

9 To accommodate confirmation of the remaining imperfect titles—a process that continues to be based on a 1903 law—the deadline for doing so has once again been extended to allow confirmation beyond December 2020.

10 Of a total land area of 14.19 million hectares, 47% or roughly 6.7 million hectares are classified as alienable and disposable, 64.8% of which was privately owned in 2003 (USAID, 2017).

to extract the Philippines' rich mineral resources[11] are regulated by the Philippine Mining Code of 1995 (USAID, 2017).

The local government has a role in land governance by cooperating with line agencies in matters such as the management of small-scale mining or protected areas as well as by deciding on land uses through zoning regulations and Comprehensive Land Use Plans (CLUP) (CELPA, 2019). Additionally, there are programs to decentralize land governance and devolve land management powers to communities such as through community-based forest management (CBFM). While effective in some areas, practical implementation of CBFM in other areas is impeded by onerous permit and management requirements as well as excessive taxation (USAID, 2017).

CONTEMPORARY TENURIAL INSTRUMENTS (SELECTION)

Title	Legal Basis	Issuing Agency
Certificate of Title	PD 1529	Registry of Deeds
Certificate of Land Ownership Award (CLOA)	RA 6657	DAR, Registry of Deeds
Emancipation Patent	PD 27, PD 1529	DAR
Certificate of Ancestral Domain Title / Certificate of Ancestral Lanf Title	RA 8371	NCIP, LRA
Titles issued on Agricultural Lands		
Decree	Presidential Decree 1529	LRA following court judgment
Free Patent (Residential & Agricultural)	CA 141; RA 10023	DENR
Homestead Patent (to encourage agricultural production)		DENR
Selection of Tenure Instruments on Forest Lands		
Community-Based Forest Management Agreement		DENR (sharing agreement with people's organization)
Integrated Forest Management Agreement		DENR (sharing agreement with qualified applicant)
Certificate of Stewardship Contract	Letter of Instruction 1260	DENR
Tenure Instruments in Mineral Lands		
Mineral Production Sharing Agreement (MPSA)	RA 7942	MGB
Exploration Permit	RA 7942	MGB

Given the complexity of land titles and tenurial instruments, only a fraction of which can be displayed here, there have been calls for a unified land law for several years. Respective legislative proposals such as the Land Administration Reform Act or the National Land Use Act have yet to be passed (CELPA, 2019).

11 For the extraction of mineral resources, the law provides for a number of different setups. Mining activities can be conducted by the state itself, through agreements between the state and private companies, or through permits granted to citizens or majority-Filipino owned companies. The Philippine Mining Code also allows for foreign-owned mining ventures through so-called Financial and Technical Assistance Agreements conditioned on a minimum investment sum of 50 million US Dollars (USAID, 2017).

1.1.5 Attempting redress: Social reforms

In recognition of the historical injustices and the structural violence inherent in historical and current land governance, there have been attempts at providing redress and working towards social justice. Two notable dimensions of these efforts are land redistribution processes and the recognition of Indigenous Peoples' ancestral domains.

1.1.6 Land reforms

The highly unequal distribution of land, first introduced with the Spanish feudal system and maintained by the land-based elite that followed it, has resulted in extreme economic inequalities triggering recurring unrest (ANGOC, 2019). Since the 1930s, several land reform programs have been passed to address this issue. The most recent was the Comprehensive Agrarian Reform Law (CARL) passed in 1988. It was enacted to regulate the redistribution of large swaths of both private and public lands under the Comprehensive Agrarian Reform Program (CARP). CARP aims to achieve social justice, reduce poverty, and promote rural growth and industrialization by redistributing agricultural lands to farmers while compensating landowners whose lands are subject to redistribution (ARC, 2008; ANGOC, 2019). The redistribution process is managed by the Department of Agrarian Reform, which is responsible for the issuance of Certificates of Land Ownership Awards and for Emancipation Patents upon completion of payment (USAID, 2017). Since 1988, several follow-up bills have been passed extending the program and further developing its procedures (CELPA, 2019). Republic Act 9700 (2009), known as Comprehensive Agrarian Reform Program Extension with Reforms (CARPER) prolonged the redistribution program until 2014 while also allowing for pending applications to be processed beyond that date. Despite the various historical land reform efforts and the long-running CARP, landlessness among rural populations remains significant and some of the most profitable lands continue to be in the hands of a few (USAID, 2017).

1.1.7 Indigenous Peoples Rights Act

Another social reform directly affecting land rights and introducing an additional titling process is the Indigenous Peoples Rights Act (IPRA) of 1997. A comparatively progressive piece of legislation at the time and in the region, IPRA recognizes Indigenous Peoples' inherent rights to their ancestral domain

and territories among other economic, cultural, and social rights. This right had already been recognized in the 1987 Constitution, which acknowledged Indigenous Peoples' rights to their ancestral lands (Art. XII, Section 5) as well as their right to preserve and develop their cultures, traditions, and institutions (Art. XIV, Section 17) thereby providing the constitutional basis for IPRA. Nevertheless, IPRA contains several revolutionary provisions for the protection of IP land rights. These include the recognition of private, communal property, acknowledgment of the spiritual and cultural bonds of IP to their lands, the right to self-governance within ancestral domains, and IP's priority rights to resources within the ancestral domain allowing others access only after securing the free and prior informed consent of the IP (Rodil, 2021e). Consequently, the passing of IPRA constituted a significant constraint on the accumulation and extraction of resources through private actors such as mining corporations. Claimants with ties to the mining industry attempted to have IPRA declared unconstitutional on the grounds of it violating the basic tenet that all natural resources belong to the state. With the Supreme Court judges divided on the issue, the case was unable to reach the majority necessary for declaring the law unconstitutional (Holden et al., 2011).

IPRA provided for the establishment of the National Commission for Indigenous Peoples (NCIP) with the authority to recognize and delineate ancestral domains and jurisdiction over all disputes that involve Indigenous People (Candelaria & Lopez, 2007). Through the NCIP Indigenous communities can claim two types of land ownership, Certificates of Ancestral Domain or Ancestral Land Title (CADT/CALT) and Certificates of Title. While a CADT or CALT is governed by the rights and limitations specified by IPRA, a prior individually registered title is regulated by the civil code and therefore does not fall under the regulations of IPRA (Candelaria & Lopez, 2007). Previously titled lands are excluded from being claimed by IPs, a provision that is reflected in the requirement of obtaining a certificate of non-coverage from DENR and DAR before a CADT can be granted (CELPA, 2019). As a consequence, CADT application processes depend on the cooperation from other agencies and are often delayed. Self-delineation is the guiding principle in the identification of ancestral domains but is assisted and requires approval by the NCIP. Once a CADT or CALT is granted, the ancestral domain or land is considered privately owned. Within CADTs, IPRA provides for Indigenous Peoples' right to control land and resources, including the allocation of ancestral lands to individuals or groups according to customary law (Section 53(a), IPRA).

1.2 Factors for conflict

Factors causing, adding to, and reinforcing land conflict are diverse and include political, socio-economic, legal-juridical, and ecological issues. Often these factors for conflict are interdependent or mutually reinforcing (Wehrmann, 2008). For example, the patronage system and weak land governance are both a symptom of and a factor for maintaining the highly unequal distribution of resources. While there are many more interrelated factors, the following main conflict factors are outlined here: weak land governance, the entrance of extractive industries, insufficient implementation of social reforms and conflict prevention mechanisms, and pressure on land.

1.2.1 Weak land governance: Overlap of tenurial instruments

One of the main factors for conflict is the overlap of tenurial instruments and land titles. As is common in post-colonial contexts, legal pluralism and the issuance of conflicting titles are the result of a land governance system that has been shaped by colonial, post-colonial, and contemporary land management regimes (USAID, 2004; Quitoriano, 2023). Given that the introduction of a new land management regime was not usually preceded by either a cancellation of the previous regime or a harmonization between the two, clashes between titles issued under the different regimes are common. An example is the issuance of titles on forest lands before these were declared as public domain and therefore excluded from private ownership. Given the costly nature of procedures to invalidate these titles, they are often maintained but are inconsistent with more recent legislation (CELPA, 2019).

Apart from conflicts between titles issued in different periods of Philippine land governance, the different land management regimes have also resulted in a complex maze of tenurial instruments and agencies responsible for implementing and enforcing them. Lack of cooperation between these agencies, sometimes evolving into a competition between them, further complicates land governance and translates into competition between claimants (CELPA, 2019). Coordination between land governance agencies is further hampered by (and to an extent reason for) the inefficient land information system characterized by the lack of unified maps, incomplete cadastral surveys, and insufficient data sharing.[12] Lack of resources for implementing agencies and irregular political will are additional factors feeding into the inefficiency of land administration and adjudication (Wehrmann, 2008). As a consequence, there are often conflicting claims to a specific piece of land or regarding a specific resource use permit. Particularly the high costs of validating, registering, or transferring land rights prevent claimants from going through the required processes and therefore add to the irregularities of Philippine land governance (USAID, 2017). Overlapping land claims often lead to litigation, expulsion of one party, or particularly when overlapping with ethno-religious divisions, escalation into violent conflict (ANGOC, 2019; Bolton & Leguro, 2015).

12 The DENR, for example, has maps and survey information at their disposal but does not have complete information on titles issued on these lands. The LRA, on the other hand, has information on titles but not the corresponding maps and land surveys (CELPA, 2019, 58).

The complexity of land governance and titles issued favors those who avail of the resources to navigate, and often manipulate the system to their gain. Power asymmetries and the financial costs involved in asserting land rights result in the hesitance of the marginalized to challenge the powerful and allow corruptive practices to secure litigation wins for those already controlling large shares of land (Wehrmann, 2008). This is further compounded by the fact that conflict resolution mechanisms often rely on monetary compensation with starkly different implications depending on the socio-economic background of the conflicting party. With limited awareness of land rights and preoccupied with the need for shelter and fear for survival, the rural poor are incapable of working through the system to defend their land rights and may try to assert their claim through CSOs and social movements or violent means (ANGOC, 2019; Bolton & Leguro, 2015). Consequentially, weak land governance reinforces the pre-existing inequalities regarding access to land thereby solidifying the political power of landed elites (Bolton & Leguro, 2015).

Another result of the lack of clarity between tenurial instruments is the widespread insecurity of tenure. With the plethora of regulations, overlapping titles, histories of displacement, and irregularity of processes, land owners and occupants face many insecurities and can rarely rely on access to their land in the long term. Insecurity of tenure increases the vulnerability of communities, hampers the delivery of services, discourages sustainable land practices, affects community trust, and can lead to further (violent) conflicts between competing users of a specific piece of land (ANGOC, 2019; CELPA, 2019).

LAWS REGULATING LAND GOVERNANCE (SELECTION)

- Act No. 496 "The Land Registration Act," 1903
- CA 141 "The Public Land Act," 1936
- PD 705 "Revised Forestry Code," 1975
- PD 1152 "Philippine Environmental Code," 1977
- PD 1529 "Property Registration Decree," 1978
- RA 6657 "Comprehensive Agrarian Reform Law," 1988
- RA 7586 "National Integrated Protected Areas System Act," 1992
- RA 7942 "Philippine Mining Act," 1995
- RA 8731 "Indigenous Peoples Rights Act," 1997
- RA 9700 "Comprehensive Agrarian Reform Program Extension with Reforms," 2012
- RA 11038 "Expanded National Integrated Protected Areas Systems Act," 2018

1.2.2 Entrance of extractive industries and agribusinesses

Extractive industries have historically claimed larger and larger land areas, thereby pushing the Indigenous inhabitants of Mindanao towards its mountainous areas. Under the influence of the World Bank, mining legislation in over 90 states was liberalized between 1985 and 1995 (Holden, Nadeau & Jacobson, 2011).

In the Philippines, the 1995 Mining Act codified several incentives for mining corporations including tax exemptions, freedom from expropriation, rights to the lands adjacent to concession areas, and the rights to water and timber on lands containing minerals (Holden, Nadeau & Jacobson, 2011). The Mining Act provides for Mineral Production Sharing Agreements for up to 25 years, which need to be approved by the DENR and cannot be more than 40% foreign-owned. It also allows Financial Technical Assistance Agreements (FTAA) that have the same duration but are approved by the president and can be completely foreign-owned (Holden, Nadeau & Jacobson, 2011). As a result of these incentives, the country saw a 400% increase in foreign mining companies between 1994 and 1996 (Holden, Nadeau & Jacobson, 2011). The perceived contributions of the mining industry to the Philippine economy—the main argument employed to justify the continuous liberalization of the extractive industries sector—were invoked again when President Rodrigo Duterte lifted a 2012 moratorium on new mining agreements[13] in 2021 in response to the pandemic-induced economic decline (Ranada, 2021).

As the chance of finding mineral deposits large enough for profitable resource extraction is relatively low and deposits can only be exploited for a limited time, mining corporations require access to as much land as possible. Following the influx of mining corporations, most remaining extraction and exploration sites and untapped deposits are located in Indigenous territories (Holden et al., 2011). The entrance of mining corporations into ancestral domains and frequent irregularities in FPIC processes are common causes of local conflicts between mining corporations and Indigenous Peoples (Holden et al., 2011). Knowing the frequently aggressive behavior of private mining security forces and given their limited adaptive capacity, rural poor communities often yield to investors, corporations, or settlers encroaching on their lands. ANGOC has found only four cases between January 2017 and June 2018 in which investors backed out from a project encroaching on community land rights, all of which were the result of the enforcement of government decisions (ANGOC, 2019). These conflicts are compounded by frequent conflicts between large-scale and small-scale miners and disputes between LGUs regarding the financial benefits of mining operations within their jurisdictions or their respective responsibility for rehabilitation activities (Interviewees 4, 5, and 6). In addition, the environmental destruction caused by mining-generated waste products can add to the displacement through extractive industries[14] (Holden et al., 2011).

The combined effects of the successive expansion of large-scale plantations, commercial logging and ranching, and mining corporations is that traditionally lowland Indigenous Peoples were forced to retreat into mountainous areas. As a consequence, Indigenous Peoples often occupy areas with slopes of 18% or more. "No land of the public domain eighteen percent (18%) in slope or over shall be classified as alienable and disposable …" under the Revised Forestry Code of 1975 (Rodil, 2021d). Many Indigenous Peoples were therefore unable to own or cultivate these last remaining areas of their ancestral domain. The 1997 Indigenous Peoples Rights Act reversed this effect to the extent that it reclassified land with slopes of 18% and more as alienable and disposable (IPRA, Chapter V, Section 12).

13 The moratorium had been passed by former President Benigno Aquino III through EO 79 which specified that "no new mineral agreements should be entered into until a legislation rationalizing existing revenue sharing schemes and mechanisms shall have taken effect" (2012, Section 4). While no such law has been passed, President Duterte's EO 130 specifies that new mining agreements need to comply with existing environmental and safety regulations (Section 2, 2021), a condition CSOs critical of the EO consider insufficient for effective environmental and social protection (Ranada, 2021).

14 An example of this is the 1996 spill of toxic mine tailings that left 24km of the Boac river biologically dead and displaced several communities living along the river (Holden et al., 2011).

1.2.3 Insufficient implementation of social reforms

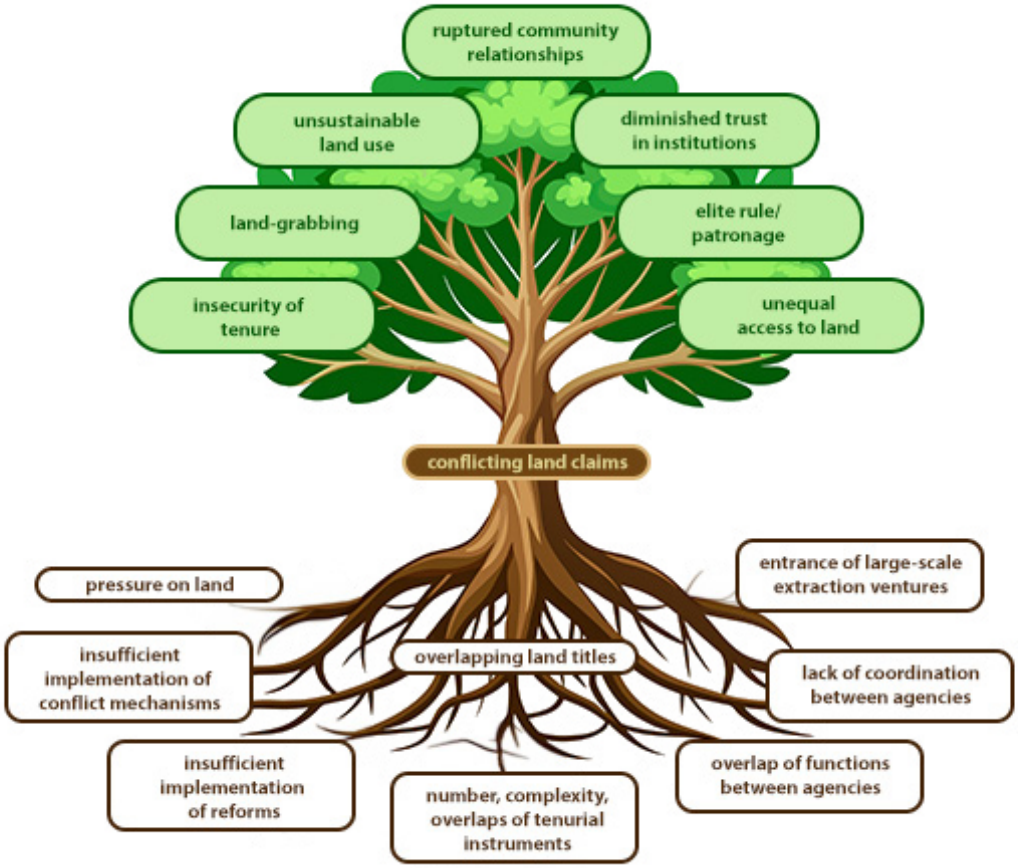
Another cause for conflict is the insufficient implementation of social reforms intended to address historical injustices such as land-grabbing or the marginalization of Indigenous Peoples and alleviate poverty in a context characterized by extreme economic inequality. While these reforms purportedly aim to address structural violence, implementation is lacking and often gives rise to various forms of direct violence.

One of these reforms is the comprehensive agrarian reform program (CARP). While the complexity of large-scale land redistribution, unclear land records, prior shortcomings of land governance, and corruption have hindered the efficient implementation of CARP, it is particularly the resistance of landowners that has caused violent conflict (ANGOC, 2019). One of the ways landowners resist redistribution is by evading CARP coverage of their lands. Originally, the scope of CARP covered over 10 million hectares but was later reduced and readjusted, a large part of which can be attributed to manipulation by landowners and their government allies (ARC, 2008). Other common forms of resistance to redistribution are harassment and aggression against farmer-beneficiaries, exclusion of qualified persons from the list of beneficiaries, and inclusion of so-called "dummy beneficiaries." Frequent and prolonged cases filed at the DAR adjudication board and land use conversions to land types not covered by CARP are other strategies employed by resisting landowners (ARC, 2008). Even when land is successfully redistributed, CARP beneficiaries are often unable to maintain it, eventually losing control over the land again through unfavorable lease-back arrangements, for example (ANGOC, 2019).

In the context of IPRA, the other large-scale social reform program, manifold challenges to the integrity of Indigenous lands prevail despite IPRA's progressive legislation and the issuance of a number of CADTs. Particularly, the entry of international and national extractive corporations often brokered by state agencies, forcible evictions to accommodate large-scale government or tourism projects, and the continuing influx of migrants result in the displacement of Indigenous communities and the shrinking of ancestral domains (ANGOC, 2019). This is further compounded by Indigenous leaders selling or mortgaging parts of their ancestral domain, a practice prohibited by IPRA (Bolton & Leguro, 2015; Muhs, 2020; Wehrmann, 2008). When CADTs are issued, it often takes years for them to be registered with the Land Registration Authority and for the title to take effect—time during which other agencies often continue to issue titles within the ancestral domain or pursue government projects without the required free and prior informed consent. The lack of effective implementation of IPRA means that the historical disenfranchisement of Indigenous Peoples continues to breed further conflict. With the DAR and NCIP unable or unwilling to live up to their mandates, both IPRA and CARP are not fully implemented and the socio-economic structures they aimed to reform remain largely in place.

1.2.4 Pressure on land

All of the conflict factors mentioned above are exacerbated by an overall pressure on land through population growth, the continuous commodification of land, and the diminution of usable land through climate change and environmental degradation (Wehrmann, 2008). To illustrate the increased complexity of land management given the ever-growing demand, Quitoriano (2023) elaborates that the Philippine population was at 37.9 million when the redistribution of rice and corn lands began under martial law, at 58.8 million when CARP started, and at 74.6 million when IPRA introduced yet another process for redistribution in 1997.[15] The degradation of fertile lands is a result of both the effects of climate change as well as unsustainable land practices that are at least partially enabled by the lack of (implementation of) regulations (CELPA, 2019). USAID estimated in 2017 that approximately 45% of agricultural lands suffered from moderate or severe erosion, a condition exacerbating the already significant effects of drought, floods, and typhoons to which 27% of the county is vulnerable. The effects of climate change often add to and reinforce land conflicts. This was particularly evident in the aftermath of Typhoon Yolanda (internationally known as Haiyan), where the destruction of land documents and insufficient land for relocations affected those already victimized by the typhoon (USAID, 2017).



15 During the May 2020 census, the Philippine population was determined at 109 million (PSA, 2021).

1.3 Effects

Land conflicts do not only bring consequences for those directly involved but also affect the wider community and societal structures. They lead to insecurity of tenure, loss of livelihoods, displacement, food insecurity, unsustainable land use, and social tensions beyond the initial conflict (ANGOC, 2019; Bolton & Leguro, 2015; Wehrmann, 2008). These long-term effects may include fractured community relationships that further undermine the community's resilience against conflict and other outside pressures (ANGOC, 2019). Displacement and forced evictions often also mean displacement from the source of livelihood. These effects then leave communities more vulnerable to exploitation and economic violence including hazardous working conditions on plantations or in mines and below living-wage salaries (ANGOC, 2019). When land conflicts entail non-compliance with environmental safeguards, they often have a damaging impact on the environment including contamination, natural degradation, and increasing vulnerability to natural disasters through unsustainable agricultural and mining practices. These in turn negatively impact livelihood sources and community health, and may add to displacement. Communities frequently experiencing land conflicts connected to weak land governance may experience mistrust, fear, and a loss of confidence in the state (Wehrmann, 2008). For Indigenous Peoples, land conflicts are particularly harmful because their ancestral land is the foundation for their social relationships and the very basis of their identity and self-governance. Displacement from their ancestral lands due to conflict is a threat to their very cultural survival (Holden et al., 2011; Muhs, 2020).

Given the overlapping claims to land and the contradictory land legislation, land conflicts are often addressed with violent means (Bolton & Leguro, 2015). Land conflicts between communities or those characterized by gross socio-economic inequalities carry a particularly high likelihood of violent conflict (USAID, 2004; Wehrmann, 2008). ANGOC found 61 killings committed in the context of land conflicts between January 2017 and June 2018. Global Witness documented 30 killings in 2018. A large majority of those killed were members of civil society organizations. Many of the killings were committed by military or gun-for-hire often under the guise of counterinsurgency efforts. Conflicts related to extraction investments were found to be among the most violent with many fatalities attributed to them. Other forms of direct violence committed in the context of land conflicts include enforced disappearances, maiming, and illegal detentions (ANGOC, 2019).

2. Land and resource conflicts in Bunawan, Agusan del Sur

A municipality of approximately 47,000 inhabitants, Bunawan is located in the province of Agusan del Sur in eastern Mindanao (PSA, 2021b). It is divided into 10 barangays and stretches over 512 square kilometers (PIMO, 2012). Agusan del Sur is characterized by an agricultural and agri-forest economy and is home to the Agusan Marsh Wildlife Sanctuary, the largest freshwater wetland in the Philippines. It is made up of a majority Indigenous population, which is more assimilated into the settler culture than in other provinces (Quitoriano, 2019). Additionally, large-scale and small-scale mining operators are present in the province.

In terms of land ownership, 24% of the land in Agusan del Sur is classified as alienable and disposable. However, titles have also been issued for lands outside of the alienable and disposable areas and are often issued to title holders from outside the province (CELPA, 2019). It is estimated that thousands of these irregular titles are located within the protected area of the Agusan Marsh (Quitoriano, 2023). Irregularities in land governance are common and also exacerbate land conflicts within Bunawan.

2.1 Large-scale mining and royalties

One of the biggest and most sensitive conflicts related to land and resources in Bunawan is related to the large-scale mining company Philsaga Mining Corporation. Philsaga is the Philippine subsidiary of Australian mining company Medusa Mining Limited, now renamed to Ten Sixty-Four Limited. Having operated in the region since the 1980s,[16] the company extracts minerals such as gold and nickel. With some of its extraction and exploration sites located within the ancestral domain of Bunawan, Philsaga was required to attain the community's FPIC and to pay royalties to the community. Irregularities in the FPIC process and these royalty payments are at the heart of the conflict.

As already mentioned, IPRA prescribes that for resource extraction ventures within a recognized ancestral domain, a company needs to attain the Indigenous community's free and prior informed consent. The Manobo Indigenous People in Bunawan submitted their application for a Certificate of Ancestral Domain Title in 2007. In 2009, they were granted CADT 136 for the area of 29,899.70 hectares covering all of Bunawan except the barangay of San Teodoro (ADO, 2018). While the Bunawan Tribal Council of Baes and Datus, Inc. (BTCDBI) started the CADT application, another Indigenous Peoples' Organization, the Bunawan Manobo Ancestral Domain Management Council Inc. (BMADMCI), took over the processing of the CADT and finalized the agreement with Philsaga.[17] The finalization of the CADT through BMADMCI

16 Until 2001, the company was operating under the name 'Banahaw Mining Company' (GIZ, 2013). Throughout the 1980's and 90's, it acquired several Applications for Mineral Production Sharing Agreements from other corporations operating in the region (PMC, 2021).

17 During a conflict analysis conducted by forumZFD (2018b), it was explained that this change was decided by former municipal tribal chieftain Crispin Barrios, who argued that BTCDBI was not capable of taking on this role because it did not have a management council. Other explanations include allegations of fund mismanagement by BTCDBI and a plot orchestrated by Crispin Barrios who was then elected president of BMADMCI (GIZ, 2013). Which organization applies for the CADT is highly significant as that organization will also receive the royalties of mining operations within the ancestral domain.

was allegedly made possible through the financial assistance of Philsaga itself and was confirmed by NCIP through a genealogical survey completed within 4 hours—a process which normally takes several days (GIZ, 2013). An FPIC assessment by GIZ conducted in 2013 found several irregularities in the operations of Philsaga within the ancestral domain. First, it observed that there were two conflicting applications: one company-solicited application to MGB and one community-initiated application to NCIP. This is significant as the community-initiated application that was finalized in 2010 circumvented the requirement for FPIC and instead merely required the NCIP to confirm the memorandum of agreement (MOA) between the company and the community. Processes also differed between barangays of Bunawan. For the barangays of Imelda, Consuelo, and San Andres, Philsaga had already entered into a 25-year Mineral Production Sharing Agreement (MPSA) in 2003 and undergone a FPIC process for that. For the remaining barangays affected,[18] the one-day MOA validation process in 2010 was the first time they underwent a consent procedure with Philsaga. GIZ further observed that the validation process was conducted by NCIP staff from both the provincial and the regional offices with varied familiarity with FPIC processes and specifically noted that most of the personnel from the provincial NCIP office were residents of mining-affected areas themselves and had been involved in previous processes between the mining company and the community.

A small stream originating from the mountain and passing through PASAKK's farmland within the ancestral domain, offers opportunities for PASAKK staff members to refresh themselves during meetings.

The processes described raised questions about the validity of the consent given. The irregularities in the CADT application resulted in a long-lasting conflict between BTCDBI and BMADBMCI (forumZFD, 2018b). Having taken over the process from BTCDBI, BMADMCI was the organization that finalized the agreement with Philsaga and the royalties that the company is obligated to pay to the community were transferred to BMADMCI. When this caused a conflict between the two organizations, NCIP intervened and through the grievance council of the LGU managed to arrive at a solution to award a smaller part of

18 The FPIC report mentions here specifically Bunawan Brook and Libertad. The MOA validation process was only conducted with the barangays affected by the mining project and not with the communities of the entire CADT area (GIZ, 2013).

the royalties to BTCDBI as well[19] (forumZFD, 2018b). Nevertheless, a lack of transparency and corruption continue to mar the royalty payments: many community members are not aware of the actual amounts of royalty shares, the money usually does not reach the communities it is intended for, and there are allegations that Philsaga only declares and pays royalties on the profits it makes on mining gold, while it actually earns more money with other minerals (forumZFD, 2018a; forumZFD, 2018b).

The Ancestral Domain Sustainable Development and Protection Plan (ADSDPP), which among other things should prescribe the way the payments are being used, is not accessible to community members and their allies. When community members reported this to NCIP they were merely referred back to the municipal tribal chieftain who refused access with the justification that knowledge of the plan may be misused to channel funds into supporting the armed insurgency. After years of tensions and a lack of transparency regarding the royalties, the organization Bantay Kita attempted to intervene and conduct an external audit of the royalty payments. However, even before being able to set its first meeting in Bunawan, the organization's legitimacy was called into question by BMADMCI which did not accept the proposal of Bantay Kita to conduct the planned audit. Instead, Philsaga responded to the allegations of mismanagement by commissioning an external audit itself. The results of the audit were not released at the time of this writing. In addition, the government's Commission on Audits has been conducting annual audits of the royalty payments. This process has similarly been characterized by irregularities, such as BMADMCI members being asked to sign empty sheets of paper or photos of water buffalos grazing in the neighborhood to be used as "evidence" that they were bought as part of the ADSDPP. With reports about large amounts missing from the royalty payments and the whole Council of Elders formally accountable for such irregularities, the dispute over the royalties remains a very sensitive topic in the community. The leaders are hesitant to speak out about any irregularities for fear of being excluded from the payments altogether. During a recent community consultation, targeted participants stayed away from the meetings for fear of it escalating the conflict further. As a result, the royalty conflict was not brought up at all during the consultations and only small-scale interpersonal conflicts were mentioned (Community Consultations, 2021).

The procedures and structures created for the community to engage with Philsaga and the respective state agencies have disrupted community relationships and traditional leadership structures for the long term. There are concerns that the leaders identified to fit the formal requirements of state policies are not legitimate as defined by the communities' customs (forumZFD, 2018a). While BMADMCI is officially recognized by NCIP as the tribal management council, BTCDBI continues to claim legitimate leadership (GIZ, 2013; Advisory group, 2024). Similarly, the conflict has affected the political representation of Indigenous Peoples in the municipality as the selection of Indigenous Peoples Mandatory Representatives (IPMRs) at both the barangay and municipal levels have been marred by irregularities largely due to the power dynamics between those Indigenous leaders that receive royalties and those that do not.

19 Community members disagreed on the exact distribution of royalties. Some believe it to be 20% for BMADMCI and 10% for BTCDBI, others said BMADMCI receives 40% of the royalties (forumZFD, 2018b). This discrepancy is indicative of the lack of transparency surrounding the royalty payments.

Apart from such governance structures, the mining operations have also affected the local economy with community members expressing fear of becoming dependent on the royalty payments (forumZFD, 2018b). With vast lands reserved for mining and exploration, there is less land available for agricultural production. Many community members see themselves compelled to take up low-paying jobs with the mining company or engage in small-scale mining activities, often without the required permits (Interviewee 2; GIZ, 2013). More people from surrounding areas have moved to Bunawan for economic opportunities through illegal small-scale mining, which has been identified as a conflict factor by the community (forumZFD, 2018b; Interviewee 2).

2.2 Conflict between large-scale and small-scale mining

Within the context of mining, there are also smaller, related conflicts apart from the dominant dispute over royalties. There is an existing conflict between the Co-o Small Scale Mining Association, Inc. (COSSMA), an association of small-scale miners, and Philsaga over the area in which they operate and the legitimacy of their operations, specifically COSSMA's small-scale mining permit. The case has gone through the mediation procedure of the Mines and Geosciences Bureau and has been decided in favor of Philsaga by the Supreme Court. Nevertheless, both COSSMA and Philsaga continue operating in the same area (Interviewee 4; forumZFD, 2018a). The conflict has been escalating in recent years with Philsaga constructing a wall to prevent small-scale miners from entering their area and hiring Armed Forces of the Philippines (AFP) soldiers to protect their mining sites and to train civilian armed guards employed by Philsaga (forumZFD, 2018a). It is particularly tense as it also involves LGU actors, the community that is entitled to royalties from both COSSMA and Philsaga, and armed personnel on either side (forumZFD, 2018a; forumZFD, 2018b). For Philsaga, these armed personnel are composed of 160 so-called Baganis, or Indigenous warriors, who are sent by local leaders in an attempt to protect the large-scale mine as a source of their royalties and are often assigned along the wall constructed by Philsaga.

The community has also observed negative effects on the environment such as the siltation into bodies of water and rice fields due to the mining (forumZFD, 2018b). Mining in the area as well as along upstream rivers in the wider region has also led to increased contamination of the Agusan Marsh with harmful chemicals like cyanide, which has negatively affected fish breeding and growth (GIZ, 2017). While not explicitly identified as a conflict factor, these effects are expected to worsen over time and are therefore a significant part of the conflict system.

2.3 Loss of ancestral domain

The second area of conflict and especially of structural violence against the Indigenous communities is the gradual loss of the Manobo ancestral domain in Bunawan. While CADT 136 for almost the whole area of Bunawan was already issued by NCIP in 2009, its registration at the LRA continues to be pending making it one of the over 150 CADTs nationwide that are not yet registered (Personal Communications, 2020). The reason that has been given for the delay is a conflict between holders of CADT 136 and two so-called migrant IP groups that claim parts of the ancestral domain along the boundary with the municipality of Rosario. NCIP has already approved one of these groups as legitimate CADT claimants, which means that they can now receive part of the royalty payments. The conflict with the second group continues to be pending. If this group is granted their claimed parts of the Ancestral Domain, which include the production areas of Philsaga, then they would not only get royalties but also the area would become part of Rosario and the municipality of Rosario would get the tax income from Philsaga instead of Bunawan. As mentioned above, the pending registration of the CADT means that the title is not yet final and makes the CADT vulnerable to amendments that further limit the area of the CADT by excluding preexisting titles.

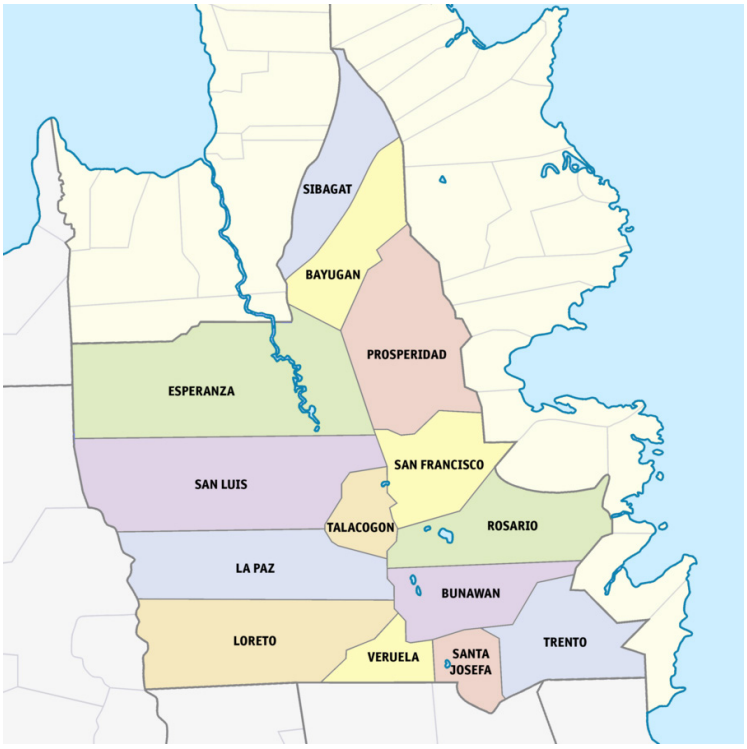
Community members are lamenting that their ancestral domain is shrinking on account of additional protected areas declared, previously issued titles and resettlement areas subtracted, and Indigenous persons reselling usage rights of their lands (Community Consultations, 2021). As described above, a CADT is a private but communal title meaning that it does not confer ownership rights to individual members of the community and, in fact, prohibits the reselling of ancestral lands. What it does allow is for traditional leaders to delineate the ancestral domain into smaller areas that are then cultivated and protected by individual families or clans (Community Consultations, 2021). It has been observed that these individual families or clans have sold usufruct rights to the lands entrusted to them to non-Indigenous settlers or have offered the land as collateral for loans (forumZFD, 2018b). Due to the economic pressures caused by the COVID-19 pandemic, the sale of access rights to ancestral lands increased during this time as additional community members saw themselves forced to look for income (Muhs, 2020). More often than not, these sales happened without any documentary evidence, enabling buyers to gradually expand the area they cultivate without the option of recourse for the sellers. Given that the buyers are often powerful politicians or businessmen, Indigenous sellers are hesitant to assert their rights against them and vulnerable to further land grabbing even after the original usufruct agreement expires (Interviewee 17). The experience of irregular FPIC processes and consequently investors entering the ancestral domain illegitimately further adds to the loss of control over ancestral domain land (forumZFD, 2018b). The fact that the CADT is not yet registered with the LRA and the ownership title thereby not officially transferred leaves the Indigenous community more vulnerable to these sales and grabbing of Indigenous lands (Muhs, 2020).

As a result, Indigenous People in Bunawan often feel like tenants on their own land and report fear of their land being diminished further. This is particularly concerning as Indigenous territory is at the very foundation of Indigenous identity and self-governance. Fear of losing their land is closely connected to fear of losing their identity, safety, and income (forumZFD, 2018b). These fears are particularly significant considering the history of marginalization suffered by Indigenous Peoples and the rationale of IPRA as a remedy for the historical loss of lands. Against this backdrop, the continuing shrinking of ancestral domains limits the Manobo's ability to self-govern and adds to the structural injustices committed against them.

2.4 Small-scale land conflicts and tenure insecurity

Community consultations conducted in 2021 revealed a wide range of small-scale land conflicts between community members. These include competing land claims; lack of, overlaps or irregularities in the documentation of land titles; mortgage conflicts; inheritance disputes; and boundary conflicts. As laid out by Bolton and Leguro (2015), conflicting land claims are not only a result of competing land titles, they can also occur in the absence of formal titles or permits. At the heart of these small-scale land conflicts lies the different grounds for claiming ownership such as a formal title, actual occupation, or ancestral rights.

Apart from the large ancestral domain area, Bunawan's land ownership distribution is characterized by a majority of relatively small lots of a maximum of 5 hectares, rather than large haciendas as is common in other parts of the Philippines (Interviewee 8). For those who do avail of a title for the land they occupy, the most commonly cited issuing agency is the DAR, with lots often split between former land owner and tenant (forumZFD, 2021; Interviewee 8).



The municipality of Bunawan shares boundaries with Rosario, Trento, Santa Josefa, Veruela, Loreto, and La Paz.

Many Indigenous persons in Bunawan are also Certificate of Land Ownership Award (CLOA) holders with their awarded lots within the area identified as Manobo ancestral domain since time immemorial. This leads to contradictory expectations in terms of the conditions of the tenurial instruments. While CLOAs are limited to a 3-hectare maximum per title holder, ancestral domain titles have no such maximum and often cover vast areas. Additionally, CLOA titles require the title holder to cultivate the land and maintain its productivity, which is not always in line with Indigenous means of agriculture. If the tenant fails to cultivate the land without a legitimate reason (e.g. affected by armed conflict, swampy area) they can be disqualified from CARP and the land can be redistributed to another CARP beneficiary, often leading to additional conflicts regarding who gets to harvest the already planted crops. Conflicts over the boundaries between CLOAs are common due to inaccurate surveys, surveys conducted without an actual inspection of the land, or boundary markers being moved (Interviewees 8, 9, and 10). As a consequence, many of the titles issued by DAR are later contested as conflicting titles for the same land or the titles are overlapping with other tenurial instruments or land classifications. Quitoriano (2023) reports estimates as high as 10,000 titled properties within the overall protected area of the Agusan marsh, spanning the municipalities of Bunawan, La Paz, Loreto, Rosario, San Francisco, Talacogon, and Veruela. Other conflicting land claims were traced back to migrants coming into the region and clearing allegedly abandoned land with the assumption that clearing the land would confer rights of usage to them. Manobo community members dispute such assumptions arguing that the traditional nomadic lifestyle of the Manobo does not translate to an abandonment of their ownership claim to lands not currently occupied. In other cases, Indigenous persons who moved around due to their practice of swidden farming sold temporarily uncultivated land to outsiders (Interviewee 8). In some cases, a third generation of settlers now live on these lands. It was observed that both Indigenous and non-Indigenous landholders derive land claims from previous generations or their ancestors without being able to provide documentation or recall exactly how it was acquired. Insecurity in the acquisition of land is a significant conflict factor and includes a variety of means such as mortgaging, inheritance, actual occupation, or assignment by the local *datu*. Mortgage and other transaction conflicts have been noted to be among the most common cases of land conflicts (Bolton & Leguro, 2015). The community consultations revealed cases of contested land titles used as collateral for loans or occupants listed as owners by tax collecting agents (forumZFD, 2021). Such transactions further complicate the already conflicting records at provincial and local governments and add to the maze of documented and undocumented land claims. There are also Indigenous and non-Indigenous land claimants that were assigned, sold, or loaned land by the *datu* or tribal leader[20]. Apart from an inconsistency in the prices paid and the conditions of the transfers, this also raises fears that the agreements would lose their validity if the *datu* passed away.

20 There appears to be a common understanding that if land is not cultivated for 6 months, usage rights can be sold to someone who is willing to cultivate it (Community Consultations, 2021).

The land conflicts mentioned here can lead to further conflicts when previous owners or occupants of the land parcel in question attempt to reclaim the land. The community consultations revealed several examples of this such as a CLOA holder who was unable to cultivate the awarded land because the previous occupant refused to leave or another CLOA holder who, after he was awarded the land, was asked to pay the previous landowner for years of cultivation. As such conflicts are not currently effectively addressed, overlapping claims add up over time, and the complexity of documents invoked and agencies involved increases. For those who depend on the cultivation of their lands for their livelihoods, the insecurity of not being able to rely on their titles presents a considerable burden, which is only worsened by the diminution of arable lands through floods and storms.

2.5 Effects of unaddressed conflicts

Community consultations in Bunawan revealed that many of the land conflicts described remain unaddressed. In cases where land claimants approached conflict resolution mechanisms, community members described several shortcomings. First, the consultations revealed the barangay as a bottleneck where applications stall. When trying to access conflict resolution mechanisms such as mediation by the mayor or interventions by DAR or DENR, community members are consistently told to present a barangay endorsement. When the barangay does not act on the complaints, as is reportedly often the case, the process cannot be continued and the conflict remains unaddressed (forumZFD, 2021). Second, Indigenous community members described experiences of discrimination and lack of cultural sensitivity when they approached land administration agencies (forumZFD, 2018b). They reported facing prejudices, such as being labeled “lazy” or considered not knowing how to cultivate land because their lands were not documented or cultivated in the ways prescribed by state laws (forumZFD, 2018a; forumZFD, 2021). As a consequence of these prejudices, non-Indigenous settlers were favored in the issuance of titles. Other agencies such as a Barangay Agrarian Reform Council are perceived to be biased towards non-Indigenous settlers as they are mostly composed of settlers.

As a result of these experiences, many community members expressed feelings of resignation and no longer attempted to approach state agencies for assistance with their land conflicts. Irregularities, a lack of transparency, and abuses of the land administration system lead to the perception that even formal titles cannot be relied on and that it is economic power, rather than laws and state agencies, that is the decisive factor in actual land distribution. The Regional Trial Court for Bunawan confirmed this stating that very few land conflict cases reach the court, partially due to insufficient documentation of transfers or conveyances (Interviewee 18). This apathy is further compounded by previous experiences of violence including killings of land claimants in the context of land conflicts (forumZFD, 2021). The resulting lack of engagement of government agencies perpetuates impunity for government actors that often fall short of fulfilling their obligations (Interviewees 14 and 15).

Mapping of Conflict Resolution Mechanisms for Land and Resource Conflicts

The analysis of land and resource conflicts, in the Philippines as a whole and in the specific example of Bunawan, highlights the lack of adequate and effective mechanisms to deal with land conflicts as one of the key factors for land and resource conflicts. At the same time, this factor constitutes a promising entry point as strengthened, culturally-sensitive, and sustainable conflict resolution mechanisms would not only be able to effectively address individual manifestations of land conflicts but also address some of the underlying factors, such as overlapping titles. The analysis further shows that to be effective, conflict resolution mechanisms need to be accessible to the community members, have mitigation measures in place to prevent abuse by powerful actors, respect Indigenous Peoples' right to self-determination, including being culturally sensitive, and be considerate of broader land and conflict dynamics so as not to cause unintended negative effects. Recognizing the significant potential of strengthening conflict resolution mechanisms, the following maps out conflict resolution mechanisms and assesses them based on these criteria: their accessibility to community members, the extent to which they integrate respect for Indigenous Peoples' rights or are implemented in culturally sensitive ways, and the application of measures to prevent abuse by powerful actors. Based on this assessment, the strengths of and challenges to these mechanisms are identified and used to further elaborate entry points for NGO engagement. This is followed by a closer look at measures taken to address some of the underlying root causes of land and resource conflicts in Agusan del Sur.

1. The application of indigenous conflict resolution mechanisms

Indigenous methods of conflict resolution are an integral part of Indigenous self-governance and often continue to be practiced to different extents. Recognizing the significance of the exercise of Indigenous justice systems as an expression of Indigenous self-determination, the Indigenous Peoples Rights Act gives preference to Indigenous conflict resolution mechanisms to address conflicts affecting Indigenous Peoples. Only when these mechanisms were unsuccessful in settling the conflict shall the complaint be submitted to the mainstream state mechanisms such as amicable settlement or the courts (IPRA, Sec. 7h). Research participants from agencies that offer conflict resolution mechanisms confirmed this limitation on their mandates when it comes to conflicts affecting Indigenous Peoples (Interviewees 3 & 11).

In Bunawan, Agusan del Sur, the Manobo practice Indigenous conflict resolution in the form of *husoy*. *Husoy* is usually conducted by an Indigenous leader and involves resolving disputes and conflicts, settling grievances among community members, arranging marriages, and negotiating for a truce during clan wars. forumZFD has been accompanying a group of Indigenous leaders that perform *husoy* for over 10 years, observing the processes, facilitating spaces for reflection, and providing capacity development, where necessary. *Husoy* is performed in accordance with Manobo customary law specifying different approaches for different types of conflicts or grievances, but always with the goal of restoring community relationships. In the absence of written guides, the process and approaches on how to deal with conflict are largely up to the Indigenous leader's judgment and often involve finding the resources for a peace offering as well. When a resolution is reached, a *tampuda* is performed, a process of cutting a vine cord to symbolize that the conflict has been resolved. If an Indigenous leader cannot resolve the disputes by themselves, they will consult leaders from other territories and resolve the conflict jointly.

A Manobo youth assists one of the traditional leaders in conducting a ritual before the start of an activity organized by forumZFD and its partners.

While the right to use Indigenous justice systems is firmly established in IPRA, in practice, Indigenous leaders complain that their conflict resolution methods are not

well respected by local government actors, including the local justice system. Instead, there is a risk of state structures gradually replacing Indigenous justice systems. In one of the barangays of Bunawan, confusions between traditional conflict resolution mechanisms and state mechanisms were observed and attributed to the fact that the traditional leader was also the barangay captain for a long time therefore blurring the distinction of when he was acting as tribal leader and when he was acting in his capacity as barangay captain (forumZFD, 2021). Additionally, the so-called recognition of Indigenous leaders by the NCIP creates overlapping structures with Indigenous leadership structures. This would sometimes lead to illegitimate leaders in the eyes of community members and not being officially recognized as their representatives. This, in turn, can disempower those Indigenous leaders who are considered legitimate and undermine their role in conflict resolution.

The resulting internal conflicts among tribal leaders prevent the efficient resolution of conflicts and deter community members from bringing their concerns to the tribal justice system. In addition, the recognition of Indigenous leaders by NCIP is prone to influence by local powerholders such as politicians and businessmen, including those aiming to purchase land or to obtain FPIC to process resource extraction permits. Indigenous self-governance structures, and by extension Indigenous conflict resolution mechanisms, can thus be co-opted by these powerholders. The control and manipulation by local elites is therefore another factor limiting the effectiveness of mechanisms meant to resolve or transform conflicts. Lastly, Indigenous partner leaders of forumZFD have observed that the conflict resolution mechanisms prescribed by customary law are effective when it comes to intra-community conflicts, conflicts between Indigenous communities, or the prevention of clan wars. However, when it comes to conflicts that are characterized by a significant power imbalance and powerful, non-Indigenous, and in some cases even international, actors, the Indigenous conflict resolution mechanisms are not always suitable to address them. Consequentially, Indigenous leaders have to rely on external means of conflict resolution to address these types of conflict.

2. Conflict resolution mechanisms offered by government agencies

As mentioned above, land and resource governance not only involves the management and titling of land, but it also includes preventing, addressing, and resolving land and resource-related conflicts. Mechanisms to address land and resource conflicts are provided for by several government agencies including the Department of Environment and Natural Resources, the Department of Agrarian Reform, or the National Commission on Indigenous Peoples. While some of these mechanisms are provided for in the laws that created these government agencies, others have been set up through specific policies or resolutions. The complexity of the conflict resolution process and the degree to which the details of the process are prescribed varies greatly between the agencies. Despite the plethora of mechanisms available, they are often not well known in communities affected by the very same conflicts for which they are meant to provide solutions. In other instances, processes that appear well-designed in the law or policy are not implemented diligently in practice. In the following, each process is described in terms of how it is set out by legislation, how it is implemented in practice, and what challenges and opportunities were identified by the interviewees.

2.1 Department of Agrarian Reform – Alternative Dispute Resolution

The Department of Agrarian Reform (DAR) holds quasi-judicial powers in that it is granted original, exclusive jurisdiction over all agrarian reform matters except those already within the jurisdiction of the Department of Agriculture or the DENR and can determine and adjudicate agrarian reform-related matters (EO229, Sec. 17). The DAR provides Alternative Dispute Resolution for agrarian reform disputes in the form of mediation or arbitration conducted by DAR agents on barangay, municipal, and provincial level. Cases need to be submitted to the barangay level first and only if they cannot be solved there, they will be escalated to the higher-level agency at the municipal level and then the provincial level. The first instance of DAR's conflict resolution system is thus the Barangay Agrarian Reform Council (BARC). As laid out in several of the governing policies, BARCs are established under the rationale of grassroots implementation of the agrarian reform with a focus on speedy and fair delivery of justice, encouraging people's initiative and self-reliance, as well as resolving disputes at the community level (DAR AO 14-90; DAR MC 05-2010). In line with MC 05-2010, BARCs are meant to be composed of agrarian reform beneficiaries including at least one IP if found in the locality and one rural woman, a representative of tenants or landless farmers, a representative of small owner-cultivators (5 ha or less), a representative of agricultural cooperatives, and a representative of landowners (5 ha or more). In addition, non-voting members include DAR, DA, and DENR officials assigned at the barangay level, a representative of the Land Bank of the Philippines, and representatives of the barangay council, local NGOs, and the Municipal

Planning Development Council (MC 05-2010, Sec. VI, B). The latter usually sit on several BARCs and fulfill advisory and support roles.

The BARC has the mandate to "mediate or conciliate between parties involved in an agrarian dispute" (RA 6657, Sec. 47). This should happen within thirty days and if unsuccessful, should be passed on to the next higher instance on the municipal level. A certificate of non-settlement issued by the mediator is necessary for the case to be passed on to the next instance. If mediation on the provincial level cannot lead to an amicable settlement, the case is then forwarded to the provincial adjudicator for resolution through adjudication. The DAR Adjudication Board is a quasi-judicial body that, in contrast to the mediators, is authorized to issue subpoenas or serve summons.

While RA 6577 and the succeeding policies do not prescribe a specific process of mediation other than the maximum time limit, research respondents have described that when they receive a case and have established that it is indeed an agrarian dispute,[21] they would usually first send a notice of mediation to the parties and invite them to a mediation meeting. During the mediation meeting, they would then inform the parties of their rights and obligations as well as the ground rules or principles of mediation including its voluntary and confidential nature. By paraphrasing standpoints, identifying issues, and suggesting solutions, the mediators will then try to come up with an agreement between the parties. The agreement should contain an enforceable solution and consequences in case one of the parties does not follow its stipulations. The agreement is formalized in a certificate of mediation containing the compromise agreement signed by both parties as well as a notary. The agreement is then final unless one of the parties appeals to the provincial level within 10 days and can be enforced via the DARAB through the sheriff or the provincial adjudicator, often with support from the Philippine National Police (Interviewee 9).

A significant challenge in the implementation of DAR's alternative dispute resolution is the absence of a prescribed method or process of mediation. In fact, interviews with those involved in alternative dispute resolution revealed that the mediators at barangay, municipal, and provincial levels have very different backgrounds and approaches to mediation. As BARC members on the barangay level represent their community, the council in Agusan del Sur predominantly consists of Indigenous persons, some of which are acting as Indigenous mediators outside of their BARC position and can apply these methods and the experiences they made in the exercise of their functions as BARC mediators as well. Others, for example, the mediator at the municipal level, are technical staff at the DAR such as the municipal agrarian reform program officer (MARPO) who may have expertise in conducting surveys or determining whether an applicant is entitled to land redistribution. On a provincial level, on the other hand, mediators hail from the legal services division and thus usually have a law degree. As a consequence, the method employed

21 A case qualifies as an agrarian dispute if it involves either a landlord-tenant relationship or if the land is designated for agricultural production.

as well as the effectiveness of the mediation is highly dependent on the individual mediator, his or her background, and expertise. Interviews revealed that the perception of what constitutes a good mediation process differed according to these backgrounds. While Indigenous mediators may criticize the reliance on compensatory payments as a settlement in state-led processes, including the consequences this entails for those with less financial resources, mediators with a legal background stress the need for training in the underlying laws as a prerequisite for a mediator's authority (Interviewees 8, 9 & 10).

Despite relevant legislation providing for mechanisms to ensure quality of mediation, such as an option for BARC to request legal assistance from DAR (Sec. 48, RA 6657) as well as capacity development programs for BARC members[22] and monitoring by the provincial agrarian reform coordinating committee (DAR MC 05- 2010), in practice these programs are not regularly accessible to BARC members in Bunawan. In fact, one of the interviewed BARC members only found out about the regulations for orientation and training programs through the research project itself. In the case of this specific BARC, members had not received information even on their term limits or the limitations of their mandate. In the absence of such guidance, the mediator expressed concern about facilitating mediation agreements that would be contradictory to CARP and that only those with access to lawyers or knowledge of the law would be able to identify when they are put at a disadvantage, thereby further perpetuating power disparities and unequal access to justice (Interviewees 8 & 9). The familiarity of the BARC among community members and their comparative accessibility has meant that conflicts that do not qualify as agrarian disputes have been addressed at BARC level despite technically falling under the jurisdiction of other agencies, such as DENR (Interviewee 9). While orientation in the relevant laws and processes remains a necessity for BARC members, the community-based mediation conducted at the barangay level, including the use of Indigenous conflict resolution mechanisms, also offers relevant approaches to mediation that can be used at the municipal and provincial levels. In addition to insufficient training and orientation, BARC members also flag that the voluntary nature of the position coupled with minimal compensation for the time spent does not correspond to the significance of the task and the potentially serious consequences if mistakes are made. As the BARC is not an official part of the barangay structure, BARC members do not receive the same benefits as barangay staff, do not have access to funds for meetings, and did not receive the advantages extended to the so-called 'front liners' during the COVID-19 pandemic (Interviewee 8). To remedy this shortcoming, some barangays would assign different tasks to BARC members, such as being a barangay *tanod* (watchmen), for them to receive the benefits awarded to barangay workers (Interviewee 9). Apart from the lack of compensation, the voluntary nature of the position also hampers efficiency as they may require additional time to understand the case compared to full-time mediators (Interviewee 8). The unattractive conditions of the position further translate into few volunteers and often always the same persons taking up the tasks.

22 These mechanisms were instituted via DAR Memorandum Circular 5, series of 2010, which followed research on the difficulties of operationalizing BARCs. The memorandum cites information that 52% of reported BARCs are in need of being organized, reorganized, and strengthened. Measures included in the memorandum, such as capacity development, paralegal cliniquing, and monitoring are taken in response to this assessment.

View of the Agusan River that stretches through the entire province.

Another challenge in DAR's alternative dispute resolution is the lack of accessible, reliable surveys. As conflicts often involve discrepancies between the technical description of the land and the actual dimensions, location, or boundaries of the lot, mediation agreements regularly include a recommendation to resurvey the land (Interviewees 9 & 10). These surveys can technically be requested from the DAR office, but as the DAR budget for surveys is allocated in advance it is rarely feasible that the DAR conducts a mediation-related survey itself. Instead, parties usually need to hire a private surveyor which comes with significant expenses and vulnerability to manipulation. Resurveys contracted by one party only have been found to often lead to (allegations of) midnight or table surveys that serve that party only. To avoid manipulation of the survey, interviewed mediators recommend either hiring a surveyor each or for the parties to agree on one, split the cost, and both be present during the conduct of the survey (Interviewees 9 & 10).

Despite these challenges, DAR's alternative dispute resolution offers opportunities as well. First, the fact that it applies CARP law to agrarian disputes means that it contains safeguards against abuses of power and inherently favors the tenant. Second, in its function as alternative dispute resolution, it offers a more accessible, inexpensive, and speedy alternative to court proceedings that relies on amicable settlements, rather than ruling in one of the parties' favor. As noted above, BARCs are often well-known and respected in the community and relied on for a whole range of conflicts.[23] Compared to other barangay-level mediation processes, such as the *Lupon Tagapamayapa* (see further details below), the BARC is not composed of elected officials, thereby reducing the potential for election-related bias and corruption in the mediation process. While their closeness to the community may lead to their own biases, the BARC guidelines mitigate this risk by providing for the possibility for conflicting parties to

23 The Provincial Agrarian Reform Office recorded a total of 1050 processes of alternative dispute resolution conducted at their level in the period of January to October 2022 alone, which allows a glimpse into how many more must have been conducted at BARC level (Interviewee 10).

request the inhibition of a mediator who has a conflict of interest (DAR AO 5-89). While the lack of a set method may translate to some arbitrariness in the application of methods and principles, it also allows for the application of Indigenous methods of conflict resolution, which has been noted as a benefit in communities with a majority Indigenous population where these methods are considered not only as more culturally appropriate but also more effective.

Tested against the criteria identified, DAR's alternative dispute resolution shows potential for effectively addressing land and resource conflicts. Being based in the barangay, it is accessible to community members as evidenced by community members' reliance on BARC even for conflicts that do not fall within its mandate. In terms of respect for Indigenous Peoples' rights and cultural sensitivity, the BARC in Bunawan is a positive example in that the interviewed BARC member is an Indigenous mediator themselves and can apply Indigenous methods of conflict resolution. While it is prescribed that Indigenous persons should be sitting on the BARC, this cannot be assumed to automatically translate into culturally-sensitive processes. Lastly, while the applicable law favors tenants over landlords, some of the aspects of the mediation process nevertheless allow for manipulation and abuses of power, such as the need for privately paid surveys and the lack of a prescribed method of mediation.

2.2 Department of Environment and Natural Resources – Alternative Dispute Resolution

Similar to the DAR, the Department of Environment and Natural Resources also provides for alternative dispute resolution as an integral part of its land management mandate. In line with the rationale of other alternative dispute resolution mechanisms, DENR's processes were established to resolve conflicts in a speedy, inexpensive, and effective way and to reduce caseloads at the courts. It is offered for different processes under the jurisdiction of the DENR, including the processing of public land applications, appeal procedures, and most significantly, claims and conflict cases (DENR AO 30-16). Conflicts that can be referred to the alternative dispute resolution mechanism of DENR are limited to conflicts related to land that is classified as alienable and disposable and that is untitled. If a title is already issued, the case has to be referred to the courts. As the untitled, alienable, and disposable land makes up only a small section of the land in Bunawan, cases are rarely communicated to the ADR at the level of the City Environment and Natural Resources Office (CENRO). To submit a conflict to alternative dispute resolution, the conflict party needs to submit a written complaint in the form of a letter detailing information on the lot, the type of conflict, and evidence of their claim. The letter may be in any language and format suitable to the complainant. Complainants often come to the CENRO without a written complaint and are then assisted by CENRO staff to prepare it at the office itself (Interviewees 11, 12 & 13). The case is then taken on by the Alternative Dispute Resolution Officer (ADRO) who calls for a preliminary conference of the conflicting parties to explain the proceedings and ideally arrive at a resolution. If no settlement can be

reached during the preliminary conference, the ADRO holds separate caucuses with the conflict parties to determine their interests and suggest another form of settlement. Once the parties agree, they sign a compromise agreement that is considered final and executory (DENR AO 30-16). Staff at CENRO Bunawan further elaborated that they would often conduct an on-site investigation in the presence of the conflicting parties, check land records at the LGU or the DENR, or interview persons in the vicinity of the lot in question. The on-site investigation can be risky when the conflict is very sensitive. In such cases, the ADRO would coordinate with the local barangay officials and police. At the same time, the presence of both conflicting parties mitigates risks of undue influence or bribery. The findings of this investigation are then presented back to the parties who are asked to agree to a resolution (Interviewees 11, 12 & 13).

Similar to the alternative dispute resolution at DAR, the DENR does not prescribe a specific approach to alternative dispute resolution or criteria for coming up with a proposed resolution. Instead, this is up to the individual ADRO, who is a regular DENR staff member who has received a one-month training to become ADRO and is performing this role in addition to their other tasks. CENRO staff members have pointed this out as a shortcoming, highlighting that ADRO should be a separate position, rather than a designation, and should require more comprehensive training (Interviewees 11, 12 & 13). Additionally, there used to be an ADRO only at the provincial and regional levels, meaning that conflicts communicated at the municipal level had to be referred to the provincial level first and conflicting parties had to travel to the provincial office to attend case conferences. With the institutionalization of an ADRO at the municipal level in Bunawan, alternative dispute resolution has become more accessible to community members and processes have become speedier.

In summary, the DENR alternative dispute resolution is relatively accessible to communities as it is located at the municipal level and offers an easy-to-navigate and assisted complaint submission process. The mechanism does not specifically provide for cultural sensitivity or respect for Indigenous Peoples' rights. In terms of measures to prevent abuses of power, the fact that surveys are conducted with both parties present constitutes a positive, while the lack of a set approach to mediation does present opportunities for undue influence.

2.3 Mines and Geosciences Bureau – Panel of Arbitrators

The Mines and Geosciences Bureau (MGB), under the Department of Environment and Natural Resources, provides a mechanism to deal with mining-related conflicts through its Panel of Arbitrators. The Panel is composed of three members, two of which should be lawyers and one a related professional, such as a mining engineer or a geologist (Sec. 201, DENR AO 2010-21). Complaints can be filed directly to the Panel or through a DENR office, whether on the regional, provincial, or municipal level. The complaint needs to be written in English or Filipino, state the facts, arguments, and remedies requested, and payment of a docket fee is required for processing. The Panel then summons the conflicting parties

to facilitate an amicable settlement of the case with any compromise agreement considered final and executory. If the parties cannot reach an amicable settlement, they are required to submit position papers to the panel for arbitration. A decision can be appealed to the DENR Mines and Adjudication Board.

In Caraga, where large parts of the region are already covered by permits for large-scale mining companies, the most common type of conflict that is brought to the Panel involves disputes between small-scale miners and large-scale mining permit holders. Having acquired the permit, the large-scale companies now have the rights over these lands. Small-scale miners, who often have operated for longer, are required to obtain the consent of the large-scale miners before commencing operations. Recognizing the significance of these conflicts, MGB Caraga has been taking steps to assist small-scale miners to legalize their mining operations and follow the proper procedures (Interviewee 4). As a part of this, the regional office or provincial mining and regulatory board attempts to settle conflicts amicably before cases are filed at the Regional Panel of Arbitrators. However, MGB staff members lament that the way the conflict resolution system is set up favors the large-scale mining companies who avail of the resources to manage drawn-out processes. In fact, in some cases the large-scale mining company would intentionally send representatives to mediation and arbitration meetings who would then not be able to decide on behalf of the company, thus dragging out the process further. As a consequence, small-scale mining applicants often surrender as going through different instances and hiring lawyers is too financially demanding, and economic pressures push them to continue their operations illegally (Interviewee 4). Additionally, MGB staff identified the contradictions between the Philippine Mining Code and IPRA as a hindrance to effective conflict resolution as it creates uncertainties regarding the applicable law and processes when the conflicting parties are Indigenous Peoples with preferential rights to exercise their Indigenous methods of conflict resolution (Interviewee 6).

The assessment of MGB's mediation and arbitration processes reveals that it is moderately accessible to communities. While the possibility of filing a complaint through the municipal DENR reduces distance, the formal requirements for a complaint are more demanding than DENR's or DAR's alternative dispute resolution. The inherent contradictions between IPRA and the Philippine Mining Act also mean that outcomes of the dispute resolution are likely to infringe on Indigenous Peoples' rights. Lastly, both the Philippine Mining Act and the process of mediation and arbitration favor the more powerful extractive industry corporations.

As part of the local mining company's reforestation program, trees have been planted within the Ancestral Domain of the Manobo in Agusan del Sur.

2.4 National Commission on Indigenous Peoples – Adjudication of Boundary Conflicts

The National Commission on Indigenous Peoples provides mechanisms to deal with boundary conflicts that arise in the process of delineating ancestral domain lands. As with other conflicts, IPRA prioritizes Indigenous methods of conflict resolution and resolution of conflicts in accordance with Customary Law. These have to be exhausted before the complaint can be taken on by the NCIP. A certification to this effect needs to be provided by the Council of Elders. The Ancestral Domains Office then invites the conflicting parties to meet and facilitates their coming up with a preliminary solution to the conflict. If such an amicable resolution fails, the NCIP will directly adjudicate the dispute through its Regional Offices. Decisions made in this way are appealable at the Court of Appeals within 15 days from receipt of the decision (IPRA). While the priority given to customary laws was noted as a positive, interviewees nevertheless noted a lack of capacity among NCIP staff to resolve conflicts (Interviewee 17). Additionally, community members in Bunawan noted slow processes in adjudicating boundary conflicts and an overall vulnerability of NCIP processes to undue influence.

2.5 Lupon Tagapamayapa

The *Lupon Tagapamayapa* is a localized, barangay-level justice system facilitating amicable settlements for specific types of conflicts. Similar to the alternative dispute resolution mechanisms at DENR and DAR, it is meant to make conflict resolution more accessible, provide for speedier and less expensive remedies compared to the court system, and relieve the court system. The *Lupon Tagapamayapa* is composed of the *Punong Barangay* (barangay captain) as well as additional members as appointed by the *Punong Barangay* and recommended by the community. In the municipality of Bunawan, only Barangay Brook has an established *Lupon Tagapamayapa*. The jurisdiction of the *Lupon Tagapamayapa* is limited in that it cannot resolve conflicts where one party is a government agency, public official or resides in a different city, where the offense is punishable with one-year imprisonment or a 5,000 PHP fine, where the offense does not involve a private injured party, or where the dispute involves property in another city (Sec. 408, Local Government Code). Asked specifically about land and resource conflicts, DILG staff confirmed that conflicts about the division of land are excluded from the *Lupon Tagapamayapa* and will be referred to the proper agencies via a letter of endorsement, but other types of land and resource conflicts such as inheritance conflicts can be heard at the *Lupon* (Interviewee 2).

Complaints can be submitted by any private individual residing in the respective barangay and can be submitted orally or in writing. The barangay captain will then invite the respondent to a mediation meeting and attempt to mediate the conflict, which he may do within 15 days. If the mediation is unsuccessful within that timespan, a conciliation panel of three members of the LT chosen by the conflicting parties is constituted (Local Government Code). As highlighted by the research respondents, the agreement that the mediation or conciliation process is aimed at is between the two conflicting parties. The barangay

captain or conciliation panel merely facilitates the process (Interviewee 2). The amicable settlement is then formalized in writing in a language that is suitable to the parties and is signed by both. The agreement is considered final and may be enforced by the *lupon* (Local Government Code). Often these agreements stipulate a compensatory sum to be paid by one of the parties and the mode of payment (Interviewee 2). If no solution can be found, the case is referred to the next higher court. At times, conflicts are also directly settled by barangay officials without referring them to the *lupon*. This is even more accessible as it does not have the associated barriers, as small as they may be, of filing a case and paying the filing fee (Interviewee 3). At the same time, the barangay captain may also directly endorse the conflict to another agency if they determine that it cannot be solved at the *lupon* level (Interviewee 2). The functioning of the *lupons* is monitored by the Department of Interior and Local Government, which also facilitates capacity development for *lupon* members (Interviewee 2).

By being physically within the communities, the *Lupon Tagapamayapa* is very accessible and well-known. Information about the process of the *lupon* is posted in the citizen's charter in the barangay hall and distributed by the purok presidents (Interviewee 2). Compared to the court system, the locally constituted mediation process does not require community members to borrow money for legal fees or transportation costs and causes less psychological stress as it is conducted by people from their community. While this runs the risk of *lupon* members having relationships with the complainants or biases, it also creates more opportunities to restore relationships (Interviewee 2). Lastly, in communities with a majority Indigenous population, the regulating provisions allow for the application of Indigenous methods of conflict resolution (Local Government Code). The Lupon is thus a very accessible mechanism of conflict resolution that is somewhat vulnerable to manipulation through its composition of elected officials but provides for respect to Indigenous Peoples' rights.

2.6 Regional Trial Court

The Philippine justice system through its courts provides for adjudication of disputes. Compared to the alternative dispute resolution processes, solutions are not identified by the parties but rather they have the chance to present evidence or any supporting information for the judge to refer to when making their decision based on the governing laws and principles. For many of the mentioned mediation and alternative dispute resolution processes, the court system is the fallback mechanism if an amicable settlement fails. At the same time, the lengthy court processes and often clogged case dockets are the very reason why these alternatives were created. Despite the presence of specialized agencies and mediation bodies, some types of land-related complaints or conflicts can only be settled in court. This includes the cancellation of an overlapping title (Interviewee 1).

Oftentimes, the cost of litigation as well as the centralized location of courts constitute barriers for community members to file cases at the courts. Even if they can avail of the services of the Public

Attorney's Office, the transportation costs to attend hearings still exceed the means of many community members. Compared to mediation or conciliation, the court process identifies clear winners and losers of a case, thereby rendering a decision but not mending the relationship as is possible through other mechanisms. Conflict parties with sufficient means can also further drag out the process by filing for appeal or filing additional related cases. As adjudication is a complaints-based, reactive body, there are no mechanisms in place to prevent abuses of power, ensure access for marginalized populations, or maintain cultural sensitivity with Indigenous Peoples. Instead, it applies laws, including those protecting Indigenous Peoples' rights, and can mete out punishment if there is a complaint for abuse of power filed before it (Interviewee 18).

Conflict Resolution Mechanisms		
Mediation	**Arbitration**	**Adjudication**
• DAR • DENR • MGB • Lupon Tagapamayapa • NCIP	• DAR • MGB	• RTC • DAR • NCIP

3. Working on root causes

Apart from mechanisms that directly address and resolve conflicts, there are also several policies, mechanisms, and platforms in place that are meant to address some of the root causes of land and resource conflicts and prevent further escalation or the emergence of additional conflicts. Ideally, these mechanisms would transform the direct, structural, and cultural violence related to land and resource conflicts and promote social justice. The following assesses such mechanisms responding to the root causes analyzed above and identified by community members and line agency respondents.

3.1 Overlapping land titles

To address the underlying issue of overlapping land titles, lack of clarity of surveys and cadastral maps, and the resulting insecurity of tenure, some policies and mechanisms have been put in place by the relevant agencies.

3.2 Segregation of prior vested rights, certificates of non-overlap, and FPIC

The Indigenous Peoples Rights Act, having been passed considerably later than other land governance-related pieces of legislation and intended to address the loss of ancestral domains, provides for several mechanisms meant to prevent further encroachment on ancestral domain land. Particularly, the existence, delayed delineation, and continued issuance of other types of titles within ancestral domains is a major conflict factor. One of the mechanisms put in place to prevent further issuance of overlapping land titles is the requirement to segregate areas with prior titles issued as part of the land titling process under NCIP. Similarly, existing agreements on the use of resources should be respected with the caveat that after the issuance of a CADT, their renewal would require the free and prior informed consent of the Indigenous People. In case of overlaps with protected areas, the Protected Areas Management Plan should be harmonized with the Ancestral Domain Sustainable Development and Protection Plan (ADSDPP).

While intended to respect the rights of both title holders and Indigenous claimants, in practice this process creates additional challenges for land and resource governance. Firstly, the issuance of Certificates of Ancestral Domain Titles by NCIP before the lands with prior vested rights are segregated and before the CADT has become operation through registration with the LRA means that issued CADTs cover much larger areas of land than what is eventually registered, thus raising unrealistic expectations among community members. The delayed issuance of CADTs and consecutive registration with the LRA often result in overlapping mandates of DENR and NCIP when it comes to ancestral domains for which CADT applications or registrations are pending. In 2018, NCIP issued 221 CADTs, of which only 50 have been registered with LRA, allowing the issuance of private titles on yet-to-be-registered ancestral domains.

With other titling agencies not having the same delay as NCIP, CADTs often have to be amended later on to account for existing titles within the domain. Thus, the encroachment on ancestral lands is seemingly legitimized (ANGOC, 2019). This is meant to be prevented by the requirement of certificates of non-overlap before a new permit is granted (NCIP AO 3-2012). However, in practice, NCIP laments that new titles are issued without their knowledge while they continue to process the CADT. One of the reasons given by NCIP staff as to why processes take so long is, in fact, the requirement of segregating previously titled lands which requires NCIP to wait for information from other agencies (Interviewee 17).

For the requirement of obtaining Indigenous Peoples' free and prior informed consent, another mechanism to ensure the protection of Indigenous Peoples' rights and prevent further conflict, there is a similar mismatch between lengthy processes at NCIP and the implementation cycles of other agencies. According to the provincial NCIP in Agusan del Sur, facilitating a full process of obtaining FPIC usually takes around one year, while validating a previously existing consent takes two months. As implied in the name, a project requiring FPIC should not commence before the free and prior informed consent is obtained. In practice, however, many government projects, especially short-term infrastructure projects, are initiated before FPIC processes are completed. NCIP officers showed understanding that these government officers cannot wait for FPIC given the time pressure for implementing these projects and continue processing FPIC while the project is already running. Apart from such instances of at the very least impaired FPIC, there are also reports of agencies not complying with the requirement at all, which may lead to further conflicts with the ancestral domain title holders. ANGOC (2019) documented 126 violations of FPIC regulations between January 2017 and June 2018, the majority of which occurred in Mindanao. These violations included forcible entries of corporations or settlers into ancestral domains without the required FPIC processes. There have also been several cases of FPIC processes facilitated by the NCIP and abused by mining corporations who manufacture consent by creating fake councils of elders, bribing members, or using attendance sheets as proof of consent (Holden et al., 2011).

Indigenous leaders insisting on FPIC compliance often experience harassment or are excluded from later decision-making processes (ANGOC, 2019). When FPIC processes are not followed, Indigenous People are deprived of their inherent right to their ancestral lands. What is intended as a conflict prevention mechanism becomes a mere rubber stamp for investment projects (ANGOC, 2019). Community members also shared frustrations with the FPIC process not being tailored to the type of project that is planned. Instead, the same labor-intensive process is required whether for a government-run infrastructure project or a small-scale research study. Community members perceive this as unfair as it favors those with sufficient resources to navigate the long processes and is not consistently applied, especially for government-initiated projects (Advisory group, 2024). Instead of preventing further overlap of land titles, the way the requirements of segregation, certificate of non-overlap, and FPIC are currently implemented leads to a vicious cycle of delays and additional titles being issued that perpetuates land conflicts and further diminishes Indigenous Peoples' rights.

3.3 BARC Verification and Certification

Apart from facilitating alternative dispute resolution, the Barangay Agrarian Reform Council (BARC) is also mandated to verify and certify the actual occupancy of land titles. In the context of overlapping tenurial instruments and unclarity of land boundaries, the barangay-level certification process makes land-related information, including maps, more accessible to community members, which can then be used to address underlying issues. While certification usually entails a 180 PHP[24] processing fee paid to the barangay, the BARC respondent does not usually ask for payment (Interviewee 8). As mentioned above, being a BARC member is a voluntary position and does not come with a designated budget. For certifications, BARC members thus rely on support from the barangay in the form of office supplies, printing, and preparation of the certificates through barangay officers (Interviewees 8 & 9).

The BARC member from Bunawan shared that the certificates are sometimes prepared at the barangay level at the request of the MARO, PNP, barangay, or a private person and brought to their house for signature. This process of certification is meant to lessen the workload of the MARO. However, it transfers a significant responsibility to volunteer workers who often do not receive sufficient training and guidance. As pointed out by the interviewed BARC member, the burden shifted on BARC is thus double, both for certification as well as for mediation of conflicts that may arise out of an incorrect or unsatisfactory certification.

3.4 DENR – Rapid Land Tenure Assessment

Similar to the certification of land titles conducted at BARC level, the DENR also provides for an evaluation of actual occupancy and title mapping. As part of a so-called Rapid Land Tenure Assessment, CENRO staff reviews existing data from the DAR and the municipality in question through the assessor's office. It then conducts a door-to-door survey to establish an inventory of untitled lots and lots with ongoing ownership or boundary conflicts. The results of this assessment are then presented to and shared with barangay captains and officials. While this process can be useful in addressing the lack of reliable information on land titles and conflicts, community members lamented that the information gathered is not shared more widely, including with NGOs and the community members themselves. They suspect that the process is conducted with the implicit purpose of identifying land that can still be titled by DENR or DAR thereby further limiting ancestral domain land for which the CADT is still pending (Advisory group, 2024).

3.5 Lack of coordination between agencies

The lack of coordination and overlap of functions between agencies involved in land governance has consistently been identified as one of the root causes of land and resource conflicts. All of the interviewees

24 180 PHP corresponds to approximately 3 USD. As of May 1, 2024, the minimum wage of an agricultural worker is 385 PHP per day (Abad, 2023). However, in reality, many workers are paid below minimum wage.

stressed this factor. In recognition of this, several platforms for coordination exist with the potential for smoothening out processes between the line agencies and reducing conflict.

3.6 Joint Administrative Order No. 01-12

To address the lack of coordination between their offices as well as their overlapping functions, the DENR, DAR, NCIP, and the Land Registration Authority issued a joint administrative order in 2012 that was meant to address "jurisdictional and operational issues between and among the agencies" (JAO 01-12). The JAO reiterated existing mechanisms to prevent overlap, such as the certificate of non-overlap, mandated the line agencies to submit documents pertaining to overlapping areas to the other agencies involved, and created coordinating committees on regional and provincial levels. While the committees thus created an opportunity for line agencies to directly communicate with each other and solve concerns related to overlapping areas of responsibility, the involved agencies on the provincial level in Agusan del Sur did not find that conflicts were addressed through the mechanism (Interviewees 1 & 11). Conflicts between the ancestral domain delineation process and land titles issued by DAR and DENR continued to be a challenge despite the mechanisms created by JAO. Interviewees attributed this to contradictory policies related to the segregation of prior land rights from ancestral domains rooted in incompatible conceptualizations of land ownership as based on the one hand on titles issued by agencies and on the other hand on Indigenous claims of ownership since time immemorial. Considering as well that the ancestral domains claimed by Indigenous Peoples stretch over vast areas of land and are often connected to additional entitlements such as royalty payments, the other agencies seem to consider the preference given to Indigenous Peoples' rights as undue (Interviewee 1). The fact that the NCIP does not have to go to DENR's Bureau of Land to issue a title is another factor that translates into more frequent conflicts with the issuance of CADTs, than between DENR- and DAR-issued titles, who would notice any overlaps when they process the titles at the Bureau of Land (Interviewee 1). DENR and DAR staff members thus found issues with NCIP's processes and identified this as one of the main reasons for continuing land and resource conflicts.

NCIP, on the other hand, identifies other line agencies' alleged lack of respect for the primacy of Indigenous Peoples' rights as formulated under IPRA as the main reason for the non-functioning of the mechanisms created under JAO. They allege that other agencies continue processing titles within a recognized ancestral domain and do not inform NCIP of such processes. NCIP staff charges this to a difference in interpretation of the relevant policies among DENR and DAR staff on provincial and municipal levels rooted in their alleged perception of IPRA as a minor law, subsidiary to the land laws governing DENR and DAR (Interviewee 17). As a consequence, NCIP withdrew from the joint committee meetings. Instead of the coordinating mechanisms on regional and provincial levels created by JAO, agencies continue to argue for better harmonization of policies on the national level. At the same time, some of the agencies continue to set up coordinating meetings without NCIP (Interviewee 1). Ad hoc coordination between line agencies for specific conflicts continues as well. For example, DAR is reporting good cooperation with the DENR regarding the approval of survey plans as well as information on municipality boundaries and good coordination with NCIP regarding the issuance of certificates of non-overlap (Interviewees 9 & 10). However, such coordination is not systematized but rather dependent on staff initiative, which also means that the resources are not always provided by the agencies.

3.7 Comprehensive Development Plans

The comprehensive development plan is a planning and governance tool created at different administrative levels including the municipal and barangay levels. The plan is developed by several relevant agencies including the barangay captain, barangay council members, sectoral representatives, and representatives of relevant line agencies, including DENR and DAR. The Department of Interior and Local Government acts as a facilitator and resource person for this process and ensures that all issues raised by constituents are tackled in the comprehensive development plans. Issues raised are then meant to be resolved through the developed projects and plans, which are implemented through the barangay and municipal council. The functionality of the plan is assessed through reporting by the barangay captain. The development of the plan thus presents an opportunity for coordination between all relevant agencies and for developing solutions for the root causes of land and resource conflicts. However, as these plans are developed as part of the local government structure, they are subjected to the same power dynamics that are also observable at the level of the municipal and barangay governments. DILG members have thus identified the dominance of local political clans as a limitation to the effectiveness of the plans (Interviewee 3). While the presence of civil society organizations in the plan development process is meant to counter this, community members from Bunawan lament that there are no community consultations preceding the plan development and that there is no mandatory participation of Indigenous Peoples (Advisory Group, 2024).

3.8 CHR – Community-Based Dialogues

The Commission on Human Rights has institutionalized community-based dialogues to bring community members and government representatives in the same space to discuss relevant issues. The Commission acts as a convenor through its regional offices, which are required to conduct dialogues twice a year. The themes of the dialogue are identified either by the central or the regional office based on recurring issues brought up during the CHR's legal assistance or investigation work and can include getting feedback on a proposed human rights-related policy or conducting a dialogue related to an emerging or recurring conflict.

A road leading up to the mining area within the ancestral domain

While acknowledging the significance of land and resource conflicts in the region, CHR Caraga reports that issues related to land and resource conflicts are not often brought up through their other mechanisms. A potential explanation for this could be that the CHR is more commonly associated with violations of civil and political rights, particularly

extrajudicial killings. Those experiencing land and resource conflicts may not think of the CHR as a relevant agency. Most of the advocacy activities conducted by the CHR are targeted at the security sector or at students who are not commonly the sectors affected by land and resource conflicts. Rather, those types of conflicts have been mentioned during the CHR's legal clinic caravans and have been identified by the national office on their own initiative.

Consequentially, CHR Caraga conducted a community-based dialogue in Hinatuan, Surigao del Sur, responding to long-lasting conflicts regarding the management of the Enchanted River tourism site and focusing on laws that have a potential impact on the community's right over their natural resources, specifically the intersection between Indigenous Peoples' rights and environmental protection policies. In addition to identifying the topic itself, the central office provided the guide questions as the dialogue was meant to feed into research building the basis for their policy advice. On the regional level, CHR staff has not initiated a dialogue on land and resource-related topics or Indigenous Peoples' rights as they consider themselves not sufficiently competent on the relevant laws, familiarized with the involved line agencies, or sensitized to work with Indigenous Peoples. Despite many CHR staff members having a law degree, they maintain that the field of Indigenous Peoples' rights is very specialized and not consistently included in every law program. While they are regularly provided with capacity development, the central office has not yet prioritized topics on Indigenous Peoples' rights as they are not as relevant in all of the regions in which the CHR operates.

3.9 Insufficient implementation of reforms

The insufficient implementation of reforms such as the agrarian reform program or the Indigenous Peoples Rights Act constitutes another root cause for many land and resource-related conflicts. In Bunawan, the most significant shortcoming in the implementation of IPRA is the continued selling of ancestral domain land despite its prohibition in the law. In response, both NCIP and the provincial Indigenous Peoples' mandatory representative have taken measures.

3.10 NCIP – Community Talks

To improve rights awareness and build resilience against power abuse, NCIP staff members conduct community talks to raise awareness of the rights recognized under the Indigenous Peoples Rights Act. In the context of land selling, NCIP staff is aiming to raise awareness of the illegality of it and the fact that the one selling the land is punishable under the law (Interviewee 17). NCIP Agusan del Sur has organized community talks on this topic. Community members from Bunawan, however, lament the perceived absence and inaction of NCIP and report that the selling of ancestral lands continues uninterrupted by NCIP.

3.11 Indigenous Peoples' Mandatory Representatives

One of the main rights recognized by the Indigenous Peoples Rights Act is for Indigenous Peoples to practice their self-governance and have access to decision-making structures. For this purpose, the law provides for Indigenous People's mandatory representatives (IPMR) to be chosen in line with Indigenous ways of choosing leaders at the barangay, municipal, and, in some provinces, on the provincial level (IPRA, 1997). In Agusan del Sur, the provincial IPMR represents all four Indigenous Peoples in the province in the local government, participates in deliberations as an equal member of the provincial board, and may propose Indigenous Peoples' related projects to the provincial board. This position can then be used to address underlying land and resource conflicts affecting Indigenous Peoples. For example, to address the issue of the illegal selling of land, the provincial IPMR initiated a provincial ordinance to prohibit this practice (Interviewee 7). The provincial IPMR further guides municipal IPMRs on how to fulfil their role and access programs, thereby supporting the proper implementation of IPRA. As with NCIP community talks, however, community members report that the provincial ordinance was not effective in ending the selling of ancestral domains land.

3.12 Lack of access to conflict resolution or justice mechanisms

As explained above, lacking access to conflict resolution and justice mechanisms not only means that conflicts are not sufficiently addressed, but it also creates distrust in government structures and adds to the complexity of the conflict landscape. Common reasons given for the lack of access include lacking resources, lacking awareness of the available mechanisms, and hesitation due to powerful opponents. To overcome these hurdles some mechanisms are in place, including legal assistance and motu proprio investigations of rights violations.

3.13 National Commission on Indigenous Peoples – Legal Affairs Office

The Indigenous Peoples Rights Act provides for a Legal Affairs Officer under the National Commission on Indigenous Peoples that is tasked to assist Indigenous Peoples in litigation involving community interests (Sec. 46, IPRA). The office is meant to give legal advice, provide legal assistance, and conduct preliminary investigations into complaints of Indigenous Peoples' rights violations. Based on the findings of such investigations, the Legal Affairs Office may then file appropriate legal or administrative action on behalf of the Indigenous person(s) affected.

One of the most significant and ongoing violations of Indigenous Peoples' rights in Bunawan is the gradual loss of ancestral domain land through the illegal selling of land, among other ways. Despite these violations falling under the mandate of the Legal Affairs Office, there are very few instances in which the office was able to take action. In most cases, NCIP does not know about the sales of ancestral domain

land and struggles to gather additional data on it as many Indigenous leaders are hesitant to disclose information for fear of repercussions against them from both the buyer and NCIP itself. An NCIP staff member attributed this to the fact that Indigenous persons who sell access to their land are themselves violating Indigenous Peoples' rights, committing an illegal act, and admitting the selling of land would destroy the integrity of Indigenous Peoples as protectors of land. While NCIP does not have an interest in charging members of Indigenous communities with violations of Indigenous Peoples' rights, it also cannot take any measures against the buyers without evidence or sellers coming forward. Considering that buyers are often powerful politicians or businessmen, Indigenous persons may also face violent retaliation if they file a complaint or bring the case to court (Interviewee 17). Additional shortcomings of the investigative and support functions of the Legal Affairs Office include a lack of human and financial resources, insufficient capacity to manage conflict, and, as with other mechanisms, no set process to conduct an investigation.

3.14 Commission on Human Rights – Human Rights Investigation

The Commission on Human Rights is the Philippines' national human rights institution created under the 1987 Constitution. Among policy advisory and monitoring functions, it is mandated to investigate human rights violations (Sec. 18, Philippine Constitution). Investigations can follow a complaint or can be initiated motu proprio, usually when CHR staff learn about a violation via news reporting. Within the Caraga region, the CHR mostly documents violations of the right to life committed in the context of the counterinsurgency as these constitute the most serious violations committed and happen regularly. According to CHR investigators, some of these killings are committed against the backdrop of land and resource conflicts. However, these conflicts would not themselves be subject to investigation but rather serve as background information while the primary focus is the most serious human rights violation. Investigations follow a preliminary evaluation of the case and may then include a field investigation or fact-finding mission, a dialogue or preliminary conference between the parties, including the duty-bearers, and result in an investigation report (CHR, 2012). If the investigation follows a complaint, the complainant may also receive financial assistance. However, CHR Caraga staff shared that in most cases victims or witnesses do not want to come forward and communicate a complaint to the CHR out of fear of retaliation. While the CHR can initiate investigations motu proprio, the prosecution needs a complainant. As even fewer victims are willing to file a case in court after the investigation is completed, most investigations do not lead to prosecution of the perpetrators and even less so lead to a verdict. Additionally, violations of economic, social, and cultural rights, which are frequently committed in the context of land and resource conflicts, are not usually investigated by the CHR but rather monitored. Lastly, CHR members shared that some human rights violations are not communicated to the CHR at all because community members simply have not heard of the CHR yet.

3.15 Commission on Human Rights – Legal Aid

To address issues related to access to justice, the Commission on Human Rights provides legal aid to victims of human rights violations. This usually involves giving step-by-step advice to the aggrieved parties including which agency to address and what the process is. Unfortunately, the parties may nevertheless still not have their concerns addressed as they often hit a dead-end when other line agencies are seemingly not acting on the case or when they are sent from one agency to another. As the CHR does not have prosecutorial or litigation powers, it can only call on these agencies in such cases. By sending referral or endorsement letters asking line agencies to look at a specific issue or conflict that was raised to the Commission, the CHR can at least increase the chance of getting a response from the agency in question (Interviewees 14, 15 & 16).

In addition to advice on individual complaints, the CHR also conducts legal caravans as a form of awareness raising. CHR Caraga used to organize legal caravans specifically targeting Indigenous Peoples. During these caravans, Indigenous Peoples were able to raise all kinds of issues with the CHR staff, including requesting assistance to understand documents related to their free and prior informed consent. While the thematic broadness was considered an advantage of the caravan as it allowed community members to raise any issue affecting them, CHR Caraga staff have stopped offering legal caravans for Indigenous Peoples as they feel they lack the capacity and knowledge of Indigenous Peoples' rights laws and cultural sensitivity to do so responsibly (Interviewees 14, 15 & 16).

Mechanisms to work on root causes			
Overlapping land titles	Lack of coordination between titling agencies	Insufficient implementation of reforms	Lack of access to conflict resolution or justice mechanisms
IPRA: Segregation of prior vested rights, certificate of non-overlap, FPIC BARC: Verification and Certification DENR: Rapid Land Tenure Assessment	Joint Administrative Order 01-12 Comprehensive development plans CHR: Community-based dialogues	NCIP: community talks Provincial Indigenous Peoples' Mandatory Representative	NCIP: Legal Affairs Office CHR: Human Rights Violations Investigation CHR: Legal Aid

Conclusion

Conclusion

As can be seen in the case of Bunawan, land conflicts are not only a significant concern due to their extent and impact on a national scale, they can also seriously disrupt community relations on a local level. Such conflicts are a frequent source of violence and closely related to other forms of conflicts or marginalization. Weak land governance and the insufficient implementation of mechanisms to prevent and address conflicts are an integral part of this conflict system. The insufficiency of mechanisms to deal with land conflicts not only means that these conflicts remain unaddressed, it also reinforces these conflicts as unresolved disputes further complicate overlapping claims and titles. This lack of clarity works in the favor of political elites and perpetuates inequalities. Related shortcomings of these mechanisms such as unclear jurisdictions, discriminatory practices, and the weakening of self-governance structures not only affect the capacity to resolve conflicts but have wider effects on social justice and community well-being. The insecurity of governance and conflict resolution mechanisms takes a toll on community relationships and the environment.

Consequentially, the lack of adequate and effective mechanisms to deal with land conflicts is one of the key factors of the land and resource conflict system. At the same time, this factor constitutes a promising entry point for the engagement of civil society organizations working on peacebuilding in the region. Conflict resolution mechanisms that are effective, accessible, culturally sensitive, and unsusceptible to abuses of power carry the potential of effectively addressing individual conflicts while also reducing the overall occurrence of land and resource conflicts by addressing root causes. Such mechanisms could build on and complement Indigenous means of dealing with conflicts thereby strengthening Indigenous self-governance, contributing to the sustainable and inclusive improvement of livelihoods, and restoring community relationships. Effectively addressing land conflicts would also mean a gradual reduction of the complexity and inherently conflictual nature of Philippine land governance. Recognizing the significant potential of strengthening conflict resolution mechanisms and based on the assessment of conflict resolution mechanisms, the following gaps and entry points have been identified.

Conclusion

Identified gaps

The mapping and assessment of the mechanisms to deal with land and resource conflicts in Agusan del Sur reveals several gaps in their effective implementation. First, the lack of a set standard for alternative dispute resolution mechanisms at DAR and DENR means that the process and quality of the conflict resolution largely depend on the individual mediators. While some principles and steps to take are prescribed, the individual mediators determine the format of the mediation or conciliation and on which basis to make suggestions. This flexibility allows for the application of Indigenous methods of conflict resolution, but has obvious implications on equality of access to justice and may lead to arbitrarily different outcomes depending on the mediator conducting the process.

Second, the continuing lack of communication and coordination between land governance agencies means that there are different levels of awareness of the extent and complexity of land conflicts. Interviews revealed that the line agencies on the provincial and municipal levels assess the status of land and resource conflicts in Agusan del Sur very differently depending on their mandate. While government actors are naturally, and for good reasons, limited to the specific jurisdiction of their mandate, the lack of a comprehensive understanding of land and resource issues risks line agencies unintentionally adding to existing conflicts. This is true both for the interconnectedness of different types of land conflicts as well as for the interplay between their mandates and processes. Looking at land conflicts only from the perspective of one specific land governance agency also means that understanding is limited to aspects related to their mandate and land conflicts addressed by the mechanisms of that agency will only be partially addressed.

Third, several of the interviewees from government agencies shared that their lack of comprehensive knowledge and understanding of Indigenous Peoples' rights, governance systems, and culture leads to hesitation in engaging with Indigenous Peoples or translates to a lack of appreciation for Indigenous Peoples' rights. Instead, some government respondents identified the broad nature of Indigenous Peoples as a trigger of conflict as it limits their mandate or authority.

Last, interviewees consistently flagged the insufficiency of resources for conflict resolution "front liners" as a factor that severely limits the effectiveness of the mechanism their agencies offer. While devolution of the responsibility to address conflicts brings significant benefits in terms of context-responsiveness and accessibility of these mechanisms, it also places the majority of the burden of addressing these conflicts on the barangay- or municipal-level mediators. Placing this enormous responsibility on them is problematic considering that these "frontliners" often do not receive sufficient resources in terms of compensation, training, or even work hours dedicated to this task.

Entry points for civil society engagement

While reforms to the Philippine land governance system have long been demanded and there is a need for improved accountability in the delivery of conflict resolution mechanisms, there is also a role for non-governmental organizations to play. In response to the gaps identified above, NGOs, whether domestic or international, like forumZFD, can provide spaces for exchange, dialogue, and case conferences with relevant line agencies and community members. On the one hand, this allows for an exchange between line agencies based on concrete conflicts and opportunities to identify further areas of cooperation. Bringing community members into the space with line agencies also provides an opportunity for increasing their awareness of the conflict resolution mechanisms offered by line agencies and grounding line agencies' intervention more firmly in the everyday experiences of community members.

On the other hand, bringing line agencies and community members together can facilitate a more comprehensive, systemic understanding of land and resource conflicts, their implications, and root causes. Such an understanding can then form the basis for more effective implementation of the line agencies' respective mandates that is considerate of potential unintended, negative consequences given the interplay between the agencies' mandates. Related to this, NGOs may also contribute to more conflict-sensitivity among line agencies by sensitizing line agencies to the root causes of conflict and developing their capacity in systems thinking and tools for conflict-sensitive planning. The *Do No Harm* framework provides a useful analysis and adaptation guide for such considerations and planning.

Third, given the expression of a need for a deeper understanding of Indigenous Peoples' rights, NGOs may provide such training and facilitate a deeper understanding of both the legitimacy as well as the limits of Indigenous Peoples' rights. This should focus on an appreciation of Indigenous Peoples' rights as a framework that ideally minimizes conflicts and addresses structural violence resulting from the histories of colonization. Given the overlaps and resulting competition between line agencies' mandates, training programs should also address the interplay between Indigenous Peoples' rights and the land rights of non-Indigenous community members as well as prior vested rights. Related to this, NGOs can provide capacity development in the culturally-sensitive engagement of Indigenous Peoples.

Lastly, there is a need to support the front liners of conflict resolution, such as BARC members or Alternative Dispute Resolution Officers at DENR. While some are well-versed in conflict mediation, the lack of comprehensive and consistently implemented training for mediators remains and can be addressed by relevant NGOs providing capacity development in relevant skills such as conflict analysis, methods of conflict transformation, or mediation and negotiation skills.

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