Housing, Land and Property Mapping Project

Philippines

**Background**

The following fact sheet and research memo have been developed to provide quick and key information of the legal and procedural context relating to Housing, Land and Property (HLP) within the target country. They are intended to inform programming and emergency responses, especially those involving shelter interventions. A rapid understanding of the tenure landscape in each country context will assist in delivering stronger and more equitable responses.

The HLP mapping project has been undertaken by Allens lawyers, using templates developed by the Australian Red Cross (ARC) and the International Federation of the Red Cross and Red Crescent Societies (IFRC). All of the research has gone through a verification process with in country lawyers and/or country experts.

**Document Change Management**

These documents are intended to be used and updated as necessary to ensure that they are always providing the most current and relevant information. We would appreciate ongoing feedback and updates from those working in country, in response or preparedness.

If you would like to make any changes to the document, please submit to the document manager Leeanne Marshall via the below table.

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Housing, Land and Property Law in the Philippines

**1 Key laws and actors**

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| [Laws](#Laws) | The main laws governing land and housing are the [Constitution](http://www.officialgazette.gov.ph/constitutions/1987-constitution/), the [Commonwealth Act No 141 of 1936](http://www.chanrobles.com/commonwealthacts/commonwealthactno141.html), the [Civil Code](http://www.lawphil.net/statutes/repacts/ra1949/ra_386_1949.html), the [Comprehensive Agrarian Reform Law of 1988](http://www.lawphil.net/statutes/repacts/ra1988/ra_6657_1988.html) as amended by the [Comprehensive Agrarian Reform Program Extension with Reforms of 2009](http://www.lawphil.net/statutes/repacts/ra2009/ra_9700_2009.html) (***CARPER***), [Indigenous Peoples Rights Act of 1997](http://www.lawphil.net/statutes/repacts/ra1997/ra_8371_1997.html) (***IPRA***) and the [Urban Development and Housing Act of 1992](http://www.nha.gov.ph/about_us/2015-pdf/RA7279.pdf) (***UDHA***). |
| [Key government actors](#KeyGov) | * Department of Agrarian Reform (***DAR***)
* Department of Environment and Natural Resources (***DENR***)
* Land Registration Authority (***LRA***)
* National Commission on Indigenous Peoples (***NCIP***)
* National Housing Authority (***NHA***)

There is significant overlap in the mandate of the above key land agencies: all of the above issue original titles, review and approve survey plans and maintain land records. |
| [Shelter cluster](#ShelterCluster) | The shelter cluster was first activated in the Philippines for Typhoon Durian in 2006. Since then, the shelter cluster has been activated 7 times, the most recent one being for Typhoon Haima in 2016. The 2013 activation of the cluster system in response to Typhoon Haiyan was the first L3 designation. |

[**2 Common types of tenure**](#CommonTenure)

|  |  |  |
| --- | --- | --- |
| **Tenure / land type** | **Commonly Registered** | **Description** |
| [Private ownership of alienable and disposable land](#PrivateOwner) | Yes | The term 'alienable and disposable land' refers to land which is capable of being privately owned. This type of land can be owned individually or collectively, and may be evidenced by: (1) a Certificate of Title issued under the Civil Code; (2) Emancipation Patents issued under Presidential Decrees No 27 and 266; or (3) Certificates of Land Ownership Awards issued under CARPER. |
| [Ownership of ancestral domain and ancestral land](#PrivateOwner) | No | The terms 'ancestral domain' and 'ancestral land' refer to environments and land respectively belonging to the Indigenous people of the Philippines (***IPs***) or the Indigenous Cultural Communities (***ICCs***). Although it is possible to register ownership of ancestral domain and ancestral land, this is generally uncommon. Under the IPRA, ownership of ancestral domain and ancestral lands may be recorded in a Certificate of Ancestral Domain Title or (***CADT***) or Certificate of Ancestral Land Title (***CALT***). |
| [Informal occupation of land](#Informal) | No | A large percentage of the urban population in the Philippines reside in informal settlements and lack formal legal rights to the land and housing which they occupy.The UDHA establishes a mechanism for formalising informal tenure: the National Housing Authority may grant a Certificate of Award to a resident of an informal settlement, which grants the recipient a right to occupy land and housing.The recipient is required to make payments for the land and house over a 30-year period, following which they obtain full ownership (subject to a restriction on selling or transferring the land for another 10 years). |
| [Use rights](#UseRights) | No | Timber and mineral lands owned by the government can be subject to use rights under certain conditions, such as licences or permits to enter onto land and harvest timber or other resources. |

**[3 Security of tenure of vulnerable groups](#SecurityofTenure)**

|  |  |
| --- | --- |
| [Women](#Women) | There are no formal restrictions on Filipino women owning, renting or inheriting land and housing. However, customary practices and traditional patriarchal relations within families and communities continue to inhibit women's access to land. Although studies on gender and land are intermittent and dated, those which do exist indicate that women are a lot less likely than men to have formal legal rights to land. |
| [Indigenous peoples](#Indigenous) | Indigenous customary ownership of land is legally recognised and protected under the IPRA, which permits ownership of ancestral domain and ancestral lands to be registered, and establishes penalties for persons who unlawfully intrude upon, or use, ancestral domains or ancestral lands.Although IPRA provides IPs and ICCs with certain protections and rights, its efficacy is undermined by its inconsistency with other land laws and, in practice, IPs and ICCs still remain susceptible to being dispossessed of their land. |
| [Informal settlements](#InformalSettlements) | It is estimated that over one third of the Philippine population lives in informal settlements or slums. The Constitution provides that urban and rural poor dwellers cannot be evicted, or have their dwellings demolished, other than in accordance with law and in a just and humane manner. This Constitutional protection against arbitrary eviction is given effect by the UDHA, as discussed in section 4 below. |

[**4 Eviction, expropriation and relocation**](#EvictionExpropriationRelocation)

|  |  |
| --- | --- |
| [Eviction](#Eviction) | The UDHA prescribes the circumstances in which the government may evict informal settlers and demolish their structures. Eviction and demolition are lawful where: (1) the informal settlers are occupying a danger area (eg, railroad tracks, garbage dumps): (2) where a government infrastructure project is about to be implemented; or (3) where there is a court order for eviction and demolition.Even where eviction and demolition is lawful, underprivileged or homeless persons cannot be evicted without 30 days' notice and an offer of adequate relocation. In practice, however, the Filipino government has been criticised for its failure to adhere to the forced eviction procedures and protections established by the UDHA. |
| [Expropriation](#Expropriation) | The Filipino government has the power to expropriate property but it can only exercise this power for a public purpose and under due process of law. Further, the government must pay just compensation for expropriated property. The requirement of due process means that it would be impractical for the government to rely on this power in the context of a disaster. |
| [Relocation](#Relocation) | The UDHA provides that, where underprivileged and homeless citizens are relocated following an eviction, they must be adequately consulted and the resettlement area must have basic services and facilities (eg, potable water, electricity, sewerage). In practice, however, the Filipino Government has been criticised by numerous local and international organisations for its failure to adhere to the requirements of the UDHA. |

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| **Disaster Law Housing, Land and****Property Mapping Project****Philippines** |
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**Disclaimer**

This report is the result of a desktop review of publicly available information. This report is not legal advice.

1. Introduction
	1. Overview

The Red Cross Red Crescent aims to respond to disasters as rapidly and effectively as possible, by mobilising its resources (people, money and other assets) and using its network in a coordinated manner so that the initial effects are countered and the needs of the affected communities are met.

The Australian Red Cross (***ARC***) is a key Partner National Society, supporting the International Federation of Red Cross and Red Crescent Societies' (***IFRC***) response to natural disasters in the Asia-Pacific.

The Red Cross Red Crescent has identified that better knowledge of local housing, land and property laws in the Asia-Pacific is vital to ensuring that emergency shelter is delivered efficiently and equitably in the aftermath of natural disasters.

ARC, with technical support and initial research from IFRC, has provided the research template to which this memorandum responds. This memorandum comprises three main sections.

* The first section, entitled ['common tenure types'](#CommonTenure), provides an overview of the different types of housing and land tenure in the Philippines. It outlines the methods used to create and transfer tenure, and analyses the degree of security of tenure afforded by each form of tenure.
* The second section, entitled '[security of tenure of vulnerable groups](#SecurityofTenure)', considers whether, and to what extent, certain groups face legal barriers to owning or accessing land and housing. This section focuses primarily on women,minority groups, indigenous groups and landless people, each of which face particular legal barriers.
* The third section, entitled '[eviction, expropriation and relocation](#EvictionExpropriationRelocation)', considers the Filipino statutory and case law which governs, or is applicable to, forced evictions, compulsory acquisition of land and relocations. This section also considers whether compensation is available in these situations.

Section 5 contains a Bibliography of resources referenced in the preparation of this memorandum and section 6 sets out a glossary of abbreviated and defined terms for ease of reference.

* 1. Background information on the Philippines

The Philippines is located southeast of mainland Asia in the Pacific Ocean and is made up of 7,107 islands.[[1]](#footnote-1) The total land area, inclusive of inland bodies of water, is approximately 300,000 square kilometres.[[2]](#footnote-2) Bound by the Sulu Sea, the Celebes Sea and the coastal waters of Borneo, the Philippines has over 35,0000 kilometres of coastline.[[3]](#footnote-3) The islands are divided into three main groups – the northern group of Luzon, Mindanao and the Visayas. Within those three groups are a number of administrative regions.



(Map sourced from GeoCurrents, 'Philippines Regions' <http://www.geocurrents.info/gc-maps/geocurrents-maps-by-country/geocurrents-maps-of-the-philippines>)

According to the 2015 census:[[4]](#footnote-4)

* The Philippines has a population of approximately 101 million people. This represented an increase of 8.64 million people from the 2010 census population records.
* Among the country's 18 administrative regions, CALABARZON[[5]](#footnote-5) in Luzon had the largest population with 14.41 million, followed by the National Capital Region (including Manila) in Luzon with 12.88 million and then Central Luzon, also in Luzon, with 11.22 million. The combined population of these three regions accounted for 38.1 per cent of the Philippine population.[[6]](#footnote-6)
* The population density was 335 persons per square kilometre, which marked an increase of 29 persons per square kilometre from the population density in 2010. The most densely populated area was the National Capital Region (in Luzon).

Between 44-49 per cent[[7]](#footnote-7) of the Filipino population lives in urban areas.[[8]](#footnote-8) The urban growth rate remains higher than the national growth rate and over three-quarters of the total population are projected to be living in urban areas by 2030.[[9]](#footnote-9)

The Philippines has 33 formally declared highly urbanised cities (***HUCs***). Four of these HUCs surpassed the one million population mark between 2010 and 2015, namely Quezon City (2.94 million) City of Manila (1.78 million), Davao City (1.63 million), and Caloocan City (1.58 million).[[10]](#footnote-10) Metro Manila, comprising of 16 different HUCs, with a population of over 10 million is by far the largest overall city.[[11]](#footnote-11)

The Philippines is immensely ethnically and linguistically diverse.[[12]](#footnote-12) Major ethnic groups include:

* Tagalog;
* Cebuano;
* Ilocano;
* Hiligaynon Ilonggo;
* Bicolano; and
* Waray.

There are hundreds of sub-ethnic groups indigenous to the Philippines, a large number of which have their own language. Approximately ten languages are spoken throughout the country, including eight major dialects – Tagalog, Cebuano, Ilocano, Hiligaynon or Ilonggo, Bicolano, Waray, Pampango and Pangasinan – and the two official languages, being Filipino (based on Tagalog) and English.[[13]](#footnote-13)

The Philippines is one of the fastest urbanising countries in the world.[[14]](#footnote-14) The high level of urbanisation in the Ilocos Region and CALABARZON, both close to Metro Manila, demonstrate the urbanisation and peri-urban development due to the spill over of economic activity into these urban regions.

* 1. Brief historical background on land tenure in the Philippines

Philippine history is marked by the pre-Spanish period, Spanish colonial period, 40 years under US rule, four years of Japanese occupation and then post-war independence since 1946.[[15]](#footnote-15) Throughout these periods, land distribution became focused in elite echelons of the population, leading to the Philippines having one of the worst land-tenure problems in the developing world.[[16]](#footnote-16)

Prior to the Spanish colonisation of the Philippines, Filipinos lived in villages (or barangays) which were governed by local chiefs (or Datus). During this time, there was a rigid social structure made up of four main groups: Datus (nobility), Maharlikas (freemen), Aliping Mamamahay (serfs) and the Aliping Saguiguulid (slaves). Despite this unequal social structure, there was widespread enjoyment of and access to land.

During Spanish colonisation, the concept of *jure regalia*, or the ***Regalian land doctrine***, was established. Under this doctrine, all land ownership needs to derive from a grant, express or implied, from the Spanish Crown. Royal Land Grants were a popular form of grant. This was a system in which 'Encomienderos' would be granted parcels of land for which they were then responsible. They were responsible for defending that land from external attack, to maintain peace and order within, and to support missionaries. This led to the transition of Filipinos from cultivators of the land to share tenants of the land.

This doctrine has since become enshrined in past and present legislation, including the *1987 Constitution* *of the Republic of the Philippines* (the ***Constitution***). For example, section 2 of the Constitution provides that lands rich in forest, timber, mineral or other resources must all remain with the State and that the exploration, development and utilisation of such land shall be subject to the full control and supervision of the State (which may at its discretion enter into arrangements with corporations involving technical or financial assistance for large-scale exploration, development and utilisation).

 During US Rule, the Torrens system was introduced to the Philippines as well as significant legislation. This included:

* the *Land Registration Act of 1902* (Act 496) which outlined comprehensive registration of land titles under the Torrens system;
* the *Public Land Act of 1903* (Act 2874) (which introduced the homestead system); and
* the *Tenancy Act of 1933* (Acts 4053 and 4113) which governed the relationship between landowners and tenants of rice and sugar cane land.

The varying level of enforcement that accompanied this legislation contributed to the problem of land tenure, particularly the *Land Registration Act*. While the Americans registered their land interests, most Filipinos were either unaware of the law or if they were aware, unable to pay for the costs of registration.[[17]](#footnote-17)

The establishment of the Commonwealth of the Philippines in 1935 saw the enactment of significant legislation in respect to land, namely, the *Commonwealth Act 1936* (the ***CA 141***), which introduced certain controls on the landlord-tenant relationships, including the requirement to have certain specified reasons and approval from the Department of Justice for the eviction of tenants. In 1939, the Rural Program Administration provided for the purchase and lease of Spanish estates (Haciendas) to the tenants.

During the Japanese occupation, many peasants and workers formed groups that engaged in insurgency operations against the Japanese, which resulted in some land gains during this period.[[18]](#footnote-18)

After Philippine Independence in 1946, the problem of land tenure continued. A series of land reform policies were introduced but none with sustained success.[[19]](#footnote-19) This began with the *Land Reform Act of 1955* (which facilitated the redistribution of large estates) and *Agricultural Land Reform Code* (abolishing share tenancy arrangements).[[20]](#footnote-20)

1. Common tenure types
	1. Tenure types
		1. **Overview**

The Constitution provides that all land within the Philippines is owned by the state, with the exception of: lands made alienable and disposable which are subject to private ownership; lands applied for under the *Indigenous Persons Rights Act of 1997* (Republic Act 8371) (***IPRA***); and ancestral domain and ancestral land.

The IPRA defines ancestral domain as all environments generally belonging to the indigenous peoples of the Philippines (***IPs***) or the indigenous cultural communities (***ICCs***) comprising of not only lands, but also inland waters, coastal areas and natural resources therein that are held under a claim of ownership. A claim of ownership requires that the domain has been occupied or possessed by the IPs or ICCs by themselves and their ancestors since time immemorial and continuously to the present. Exceptions will apply where this occupation or possession was interrupted by:

* war;
* force majeure;
* displacement by force, deceit or stealth; or
* consequence of government projects (or any other voluntary dealings entered into with government or private individuals/corporations which are or were necessary to ensure economic, social and cultural welfare).

The IPRA defines ancestral land as land that is similarly occupied, possessed and utilised by individuals, families or clans who are IPs or ICCs since time immemorial and continuously to the present with the same exceptions as above. The main distinction between the two is that ancestral land refers to only land whereas ancestral domain refers to all environments. As such, the certification of title will differ. Certificates of Ancestral Domain Title (***CADTs***) refers to a title formally recognising the rights of possession and ownership of IPs or ICCs over their ancestral domain whereas Certificates of Ancestral Land Title (***CALTs***) refers to a title formally recognising the rights of the IPs or ICCs over their ancestral lands. IPRA is a leading example of recognition for ICC/IP rights and has been used as a model for other developing countries.[[21]](#footnote-21)

Land in the Philippines is basically divided into three major land classifications:

* ancestral domain and ancestral land;
* land of public domain; and
* land of private ownership.[[22]](#footnote-22)

Different laws deal with these three land classifications. Ancestral domain is governed by the IPRA, the land of public domain is governed by the CA 141 and land of private ownership is governed by the *Civil Code of the Philippines 1949* (Republic Act 386) (the ***Civil Code***).

The CA 141 outlines how land of public domain is subdivided. The two main divisions are:

* alienable and disposable lands; and
* non-disposable, timber/mineral lands (including forestlands and national parks).[[23]](#footnote-23)

Only alienable or disposable land can be privately owned. In 2003, approximately 65 per cent of alienable or disposable lands were classified as land under private ownership.[[24]](#footnote-24) Forestlands and national parks are subject only to usufruct and resource utilisation under certain conditions.

As of 2011, forestlands and national parks comprised approximately 50 per cent of the Philippines total land. Alienable and disposable lands comprised approximately 47 per cent. At that time, a third of the forestlands and national parks were not covered by any tenure instrument.[[25]](#footnote-25)

Most of the ancestral domain (evidenced by CADTs) issued under IPRA (see section 3.2(a) for further discussion) are located within forestlands. As of 2012, approximately 158 CADTs had been issued, covering 14 per cent of the Philippines total land.[[26]](#footnote-26) There are then further divisions of public domain according to designated land use. In addition to initial holders of tenure, tenure rights extend through rentals, permits or informal agreements such as usufruct.

Administration of tenure in the Philippines is largely inadequate.[[27]](#footnote-27) There is no reliable or accurate source of information on landownership, tenure, boundaries, location, actual land uses and land evaluation. Even delineation of the boundaries between public, private and ancestral domains are not complete.[[28]](#footnote-28) There is no set of cadastral maps that show titled and untitled property or how land parcels fit under the different tenure instruments.[[29]](#footnote-29) The complex, fragmented and overlapping landscape of laws that deal with the different tenure instruments mean inconsistency among the many government and non-government agencies involved. For example, Local Government Units (***LGUs***) continue to issue tax declarations even for lands under the public domain that are inalienable.[[30]](#footnote-30)

* + 1. **What are the key pieces of legislation governing housing, land, building and planning? Please provide links to copies of the legislation.**

There is a number of Acts, Presidential Decrees, Executive Orders, Administrative Orders and Departmental Circulars which govern the operation of housing, land, building and planning law in the Philippines.

The Constitution provides the broad framework and principles on the governance of tenure but does not deal with operational matters of land administration.

The three sector based tenure reforms (listed below) cover in greater detail the tenure rights of disadvantaged sectors as provided for in the Constitution. The laws on resource management, protection and use (listed below) bolster the tenure governance and provide some safeguards and legal recognition of tenure rights in public lands, forestry and fisheries, including the rights of ICCs/IPs. However, the main focus of these laws is on investment not tenure reform.[[31]](#footnote-31)

The key pieces of legislation governing housing, land, building and planning are as follows:

* [CA 141](http://www.chanrobles.com/commonwealthacts/commonwealthactno141.html)
* [*Cadastral Act of 1913*](http://www.chanrobles.com/acts/actsno2259.html) (Act 2259) (***CA 2259***)
* [Civil Code](http://www.lawphil.net/statutes/repacts/ra1949/ra_386_1949.html)
* [Constitution](http://www.officialgazette.gov.ph/constitutions/1987-constitution/)
* [*Disposition of Lands for Socialized Housing of 2006*](http://www.lawphil.net/statutes/repacts/ra2007/ra_9397_2007.html)(Republic Act 9397)
* [*Environmental Planning Act of 2013*](http://www.lawphil.net/statutes/repacts/ra2013/ra_10587_2013.html) (Republic Act 10587)
* [*Family Code of the Philippines of 1987*](http://www.lawphil.net/executive/execord/eo1987/eo_209_1987.html) (Republic Act 209)
* *Land Registration Act of 1902* (Act 496)
* [*Local Government Code of 1991*](http://www.lawphil.net/statutes/repacts/ra1991/ra_7160_1991.html) (Republic Act 7160) (***Local Government Code***)
* [*Public Land Act of 1919*](http://www.lawphil.net/statutes/acts/act_2874_1919.html)(Act 2874)
* [*Residential Free Patent Act of 2009*](http://www.lawphil.net/statutes/repacts/ra2010/ra_10023_2010.html) (Republic Act 10023) (***RFP Act***)
* [*The Condominium Act of 1966*](http://www.lawphil.net/statutes/repacts/ra1966/ra_4726_1966.html) (Republic Act 4726)
* [*Urban Development and Housing Act of 1992*](http://www.nha.gov.ph/about_us/2015-pdf/RA7279.pdf) (Republic Act 7279) (***UDHA***)

**Sectoral tenure reforms (rural sector)**

* [*Comprehensive Agrarian Reform Law of 1988*](http://www.lawphil.net/statutes/repacts/ra1988/ra_6657_1988.html)(Republic Act 6657) (***CARL***) as amended by [*Comprehensive Agrarian Reform Program Extension with Reforms of 2009*](http://www.lawphil.net/statutes/repacts/ra2009/ra_9700_2009.html) (Republic Act 9700) (***CARPER***)
* [IPRA](http://www.lawphil.net/statutes/repacts/ra1997/ra_8371_1997.html)
* [*Philippine Fisheries Code of 1998*](http://www.lawphil.net/statutes/repacts/ra1998/ra_8550_1998.html) (Republic Act 8550) (***Fisheries Code***)

**Natural resource management, protection and use**

* [*Mining Act of 1995*](http://www.lawphil.net/statutes/repacts/ra1995/ra_7942_1995.html) (Republic Act 7942)
* [*Revised Forestry Code of 1975*](http://www.lawphil.net/statutes/presdecs/pd1975/pd_705_1975.html) (Presidential Decree No 705)

**Other Relevant Legislation**

* [*Philippine Disaster Risk Reduction and Management Act of 2010*](http://www.lawphil.net/statutes/repacts/ra2010/ra_10121_2010.html) (Republic Act 10121)

**Presidential Decrees**

* [*Property Registration Decree*](http://www.lawphil.net/statutes/presdecs/pd1978/pd_1529_1978.html)(Presidential Decree 1529) (***PRD 1529***)
	+ 1. **What types of tenure exist?[[32]](#footnote-32)**

| **Tenure Type** | **Legal Recognition** | **Transferable** |
| --- | --- | --- |
| Registered/titled individual property ownership in urban and rural areas  | The Civil Code; PRD 1529; CA 141; CA 2259; CARPER and RFP Act | Yes. Transferable with no restriction for full freehold. Delayed freehold titles have restriction on transfer and mortgages ranging from 5 to 25 years.  |
| Registered/titled private ownership of groups/community | Civil Code; PRD 1529; CARPER; the Philippine Condominium Act of 1966 and IPRA | Yes. Subject to certain restrictions on common areas. |
| Unregistered private ownership | Civil Code; CA 141; RFP Act and PRD 1529 | Possible, further disposition of any land titled under special patents requires Congressional approval for those named under national government agencies and their respective local councils.  |
| Leases and rentals in Private Lands | Civil Code | Yes, subject to the lease/rental agreement.  |
| Leases and Rental in Public Lands | Civil Code  | Possible. Subject to the specific lease or rental agreement.  |
| Occupation of unclassified public lands | None until the land is classified as either alienated and disposable or as forestland and the appropriate tenure instrument is issued. | No, unless the land is classified and the tenure instrument is formalised.  |
| Informal occupation and use of privately owned and government lands (informal settlement) | No unless it can be formalised pursuant to certain UDHA provisions. | No. |

* + 1. **Which, if any, of these types of tenure provide a high degree of security of tenure?**

The highest degree of security of tenure is registered/titled individual property ownership with possession of a 'Certificate of Title', which proves ownership over said piece of land and is recorded in the 'Register of Deeds' in accordance with PRD 1529.[[33]](#footnote-33)

Tenure instruments such as rentals, leases, permits and contracts that are issued by national agencies and LGUs over alienable and disposable lands of the public domain tend to have secure tenure.[[34]](#footnote-34)

Holders of informal tenure tend to have insecurity of tenure. The only protection of informal tenure rights is set out in the *Anti-Squatting Law Repeal Act of 1997* (Republic Act 8368) which decriminalises informal settlement (discussed further in [section 2.4](#Informal)).

* + 1. **How does tenure differ between urban and rural areas?**

In the Philippines, the governance of tenure is focused mainly on the governance and management of landscapes where people and communities are considered part of that landscape.[[35]](#footnote-35) Little data is generated about security of tenure in areas that are less densely populated. As such, laws that address tenure issues (such as UDHA*)* seem to favour urban areas more than rural areas. Tenure issues in rural areas are considered to be covered by the sector based tenure reforms discussed below. [[36]](#footnote-36)

* + - 1. **Urban areas**

In 1992, UDHA was passed to address the huge backlog in providing for land security and housing for the poor in the rapidly growing urban areas. UDHA mandates local governments to conduct land inventory, register informal settlers and allocate land for secure tenure.[[37]](#footnote-37) It also induces housing developers to provide land or funds for social housing.[[38]](#footnote-38) Bodies responsible for implementation of the programs under UDHA include both government and non-government entities. The non-government entities comprise mainly developers, professionals and project beneficiaries, while the government entities are primarily the country’s five housing agencies:

* the National Housing Authority;
* the National Home Mortgage Finance Corporation;
* the Home Insurance Guaranty Corporation;
* the Housing and Land Use Regulatory Board; and
* the Housing and Urban Development Coordinating Council (an umbrella organisation).[[39]](#footnote-39)

Existing legal and institutional framework for tenure in urban areas does not recognise rights of informal settlers, which compounds some of the most prevalent tenure issues. At 2013, informal settlers constituted 15 per cent of the country's urban population.[[40]](#footnote-40) Alternate ways of formalisation, which include relocation and low cost housing programs in identified areas in the urban centres and are implemented by some of the bodies listed above, often involve a slow and complex process.[[41]](#footnote-41)

In practice, changes in legal and institutional framework for tenure in urban areas are largely driven by national infrastructure projects and investments by private entities.[[42]](#footnote-42) This has resulted in very little human-centred planning, with the uncontrolled growth and direction of urban development a testament to this.[[43]](#footnote-43) Further, such development is often unsafe and in areas that have land use restrictions imposed by danger zones.[[44]](#footnote-44) While such land use restrictions are generally justified, they are rarely enforced and therefore do not achieve their objectives.[[45]](#footnote-45) Overall and in practice, there is far less recognition of group tenure rights in urban areas than in rural areas.[[46]](#footnote-46)

* + - 1. **Rural areas**

In 1988, CARL, which forms the legal basis for the Comprehensive Agrarian Reform Program (***CARP***), was introduced to grant landless farmers and farmworkers secure land tenure in rural areas. It was scheduled to be completed in 1998, but continued in various forms as a government initiative until its end in 2014.[[47]](#footnote-47) In 2009, CARPER was enacted so to extend yet again the CARP deadline to 2014 for distributing agricultural lands to farmers.[[48]](#footnote-48)

2014 was meant to mark the completion of effective transfer of land to the farmers, and also to eliminate the uncertainties in the rural property market.[[49]](#footnote-49) Four years on and there is still work to do in this regard.[[50]](#footnote-50)

CARP has long been subject to criticism by Filipino farmers and advocacy groups.[[51]](#footnote-51) Some argue that, from the outset, it was skewed to benefit landowners rather than small farmers.[[52]](#footnote-52) It is widely agreed that implementation of some of the most necessary reform measures was lacking. The Department of Environment and Natural Resources (***DENR***), the Department of Agricultural & Agrarian Land Reform (***DAR***), the Department of Justice (***DOJ***) and the Land Registration Authority (***LRA***) were among some of the bodies responsible for implementation of the program.[[53]](#footnote-53)

The World Organisation Against Torture (the ***OMCT***) has reported concerns that the land reform in the Philippines has included ambiguities that compromise the full enjoyment of land rights by the most vulnerable.[[54]](#footnote-54) For example, landlords are exempt from limitations on the maximum area of land they can own if they assert that they intend to convert land from agricultural use to commercial, industrial or residential use. This has resulted in lands remaining de facto concentrated in the hands of the wealthy few.[[55]](#footnote-55) There are also reports that CARP led to human rights violations against both those who tried to claim land as well as those who were awarded land under the program – by means of illegal forced evictions, destruction of properties, false criminal charges and physical harassment and assault.[[56]](#footnote-56) Between 2001 to 2007, approximately 40 famers were allegedly killed in the course of their efforts to claim land under CARP.[[57]](#footnote-57) 57 incidents of human rights violations against 405 agrarian reform beneficiaries in the Province of Masbate (in the Bicol region) were reported in 2007-2008.[[58]](#footnote-58) Five of those incidents were attributed to the Philippine National Police Regional Mobile Group in reports, while the rest were attributed to non-state actors.[[59]](#footnote-59)

A further issue for rural areas are unfair Agribusiness Venture Arrangements (***AVAs***). AVAs are entered into between Agrarian Reform Beneficiaries (***ARBs***) and private investors, and are often unfairly onerous and detrimental to ARBs. For example, AVAs are written in English, contain inequitable leasing schemes, and are often executed without prior consultation with farmers, in violation of Filipino contract law. In addition, an AVA period can be up to 15 to 30 years, with provisions providing for automatic renewal for a period of another 15 to 30 years, binding farmers to these onerous provisions for a lengthy period of time.[[60]](#footnote-60)

House Bill No 5085 (the ***AVA Bill***) aims to regulate AVAs in order to safeguard the rights and interests of farmers by, for example, mandating a periodic review of the terms of an AVA, and giving ARBs the right to rescind these agreements. As at January 2018, the AVA Bill is yet to be passed into law.

* + 1. **What are the main government and non-government bodies (eg, representative bodies) which administer or deal with housing, land and property?**

| **Land classification** | **Responsible government/non-government bodies** |
| --- | --- |
| **Alienable and disposable lands** Urban and rural residential landsAgricultural lands Public alienable and disposable lands | LRALands Management Bureau which is responsible for titling public alienable and disposable landsDAR  |
| **Public lands** Forestlands National ParksMineral lands | The DENR and other agencies for watersheds under jurisdiction of other agencies, including Laguna Lake Development Authority for Laguna Lake |
| **Ancestral Domains**  | National Commission on Indigenous Peoples (Philippines) (the ***NCIP***)  |

* 1. **Documenting tenure**
		1. **What statutory instruments or legal documents (eg title deeds or leases) are used to create or transfer tenure?**

The common statutory instruments used in the Philippines are as follows:

* Under the Civil Code, a 'Certificate of Title', possession of which proves ownership over a piece of land and is recorded in the 'Register of Deeds' at the LRA in accordance with PRD 1529.[[61]](#footnote-61)
* Under IPRA, the statutory instruments used to create tenure are CADTs CALTs.[[62]](#footnote-62)
* Under the Fisheries Code, municipal permits grant user rights to fisherfolk.
* Under CARP, there are a range of statutory instruments used, including Certificates of Land Ownership Awards (***CLOAs***), which provide for individualisation of collective tenure rights (through a complicated and time consuming application process).
* For private alienable and disposable lands, Emancipation Patents (***EPs***) which are effectively titles of ownership, issued under Presidential Decree No 27 and Presidential Decree No 266.
* Section 22 of the CARL provides that beneficiaries have usufruct rights over award land as soon as the DAR takes possession of such land, even if the beneficiary's EP or CLOA (as the case may be) is still pending. However, section 12 of CARP provides that lands subject to an EP or a CLOA cannot be transferred or sold for a period of 10 years unless through inheritance.
* Under UDHA, a certificate of award from the National Housing Authority to the beneficiary provides the beneficiary with the right of occupation, but not sale, transfer or lease.[[63]](#footnote-63) On the final payment for the land and house parcel (over a 30 year period with a six per cent interest rate), the beneficiary will receive ownership but may not sell or transfer the property for another 10 years unless through inheritance.
* Under the Community Mortgage Program (the ***CMP***) which allows UDHA beneficiaries to access mortgage finance to develop land through community ownership structure, individual beneficiaries receive ownership of their lot through a 'Lease Purchase Agreement' with the applicable community association on full repayment of the community loan.[[64]](#footnote-64)
* Under article 572 of the Civil Code, there is also the right of usufruct (that allows the right to use land belonging to another person, and to lease or alienate the right of usufruct subject to the conditions of the grant).

This right expires on the expiry of an agreed term or on the death of the beneficiary. These rights are not common in the Philippines but they are used by some LGUs such as the City of Taguig (in Metro Manila) and Muntinlupa (in the National Capital Region).[[65]](#footnote-65)

* Section 38 of the Forestry Code also gives tenure through issuing timber licenses and concessions. The tenure rights are that of right of harvest and right of exclusion (preventing entry by others) but not the right to sell or transfer the licence/concession.[[66]](#footnote-66)

This is not a comprehensive overview of all statutory instruments or legal documents that are used to create or transfer tenure in the Philippines. There are numerous systems for issuing tenure instruments because tenure governance in the Philippines is based on multiple pieces of legislation that define the policy, legal and organisation frameworks related to tenure and governance of land, forests and fisheries.[[67]](#footnote-67)

New laws or amendments that are passed by the legislature do not necessarily result in old laws being repealed. Sections of old laws are instead superseded, replaced or amended by the new laws, allowing the old laws to retain 'residual' validity in whole or in part. There is also a highly sectoral approach to tenure reform.

* + 1. **What non-legal documents or actions (e.g. verbal agreements or handshakes) are used to create or transfer tenure?**

It is not possible to create or transfer tenure absent legal documents. Non-legal actions that may contribute to customary ownership of land in the Philippines, which will be discussed in detail in [section 2.4,](#Informal) are addressed under IPRA and the Constitution.

* 1. Customary ownership
		1. **Is customary ownership of land legally recognised? If so, what is the basis for legal recognition?**

IPRA definescustomary law as 'a body of written and/or unwritten rules, usages, customs and practices traditionally and continually recognised, accepted and observed by respective' ICCs and IPs.[[68]](#footnote-68) It has also been defined as a 'set of customs, practices and beliefs that are accepted as obligatory rules of conduct by IPs and local communities'.[[69]](#footnote-69)

Customary ownership of land in the Philippines is primarily recognised in IPRA and the Constitution.

* IPRA, which is discussed in detail in [section 3.2,](#Indigenous) provides 'unequivocal recognition of customary land rights', and permits Filipinos to obtain 'written titles to genuine claims over ancestral lands and domains'.[[70]](#footnote-70) Under IPRA, the NCIP is responsible for issuing CADTs and CALTs with respect to ancestral domain and land respectively, providing statutory recognition of IPs' rights.
* The Constitution provides a range of rights to IPs, including with respect to land, including:
* Article II, section 22 which provides that '[t]he State recognises and promotes the rights of ICCs within the framework of national unity and development';
* Article XII, section 5 which provides that '[t]he State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of ICCs to their ancestral lands to ensure their economic, social, and cultural well-being. The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain';
* Article XIII, section 6 which provides that '[t]he State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of ICCs to their ancestral lands. The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law;' and
* Article X, section 15 which creates autonomous regions in Muslim Mindanao and in the Cordilleras for areas 'sharing common and distinctive historical and cultural heritage, economic and social structures, and other relevant characteristics'. As both of these areas have majority populations of IPs, this can be seen to provide some degree of recognition to these populations.
	+ 1. **What are the sources of customary rules, and what are the customary rules governing housing, land and property?**

Many indigenous groups practice customary law in the Philippines, making it difficult to draw generalisations about the sources of customary law. According to the United Nations Development Fund, 33 per cent of the total indigenous population lives in the Cordillera Administrative Region in northern Luzon, and 61 per cent of the indigenous population lives in Mindanao.[[71]](#footnote-71) The map below shows the location of IPs in the Philippines.



Source:International Work Group for Indigenous Affairs, *Indigenous Peoples in the Philippines: 2016 Yearbook Article*, p 253.

This section refers to the practices of the Cordillera peoples, comprising approximately 1.2 million IPs living in six different provinces: Mountain Province, Kalinga, Apayao, Beguet, Abra and Ifugao.[[72]](#footnote-72) Customary law for the Cordillera peoples is passed down orally and administered by a Council of Elders, known as the Lallakay/Amam-a, membership of which is partly based on wisdom. The Council of Elders (the ***Council***) meets at the physical centre of governance, known as the Dap-ay/Abong, to discuss matters concerning the community. The Council governs the ili, which is the 'communal territory of an indigenous settlement', the boundaries of which are defined by the peoples' prior use and occupation and by geographical features like mountains.[[73]](#footnote-73)

The Council, which is responsible for overseeing customary law, makes regulations about matters such as water pollution, regulation of fishing and land use and occupation. For example, the Cordillera peoples recognise numerous types of property. The Council is also involved in a Bodong, which is akin to a form of arbitration system recognised as an effective way of settling matters between ethnic groups and tribes in Cordillera.[[74]](#footnote-74)

The ili collectively owns communal properties including sacred grounds and lands for fishing and hunting. These may be accessed by all members of the community, provided that they do not abuse this right. There are also clan properties, which include farms and pasturelands, and are acquired as a result of occupation and usufruct rights. Finally, the Cordillera peoples recognise private properties such as homes and gardens, which are able to be inherited, with it 'often being the case that the most productive land is reserved for the family's eldest son'.[[75]](#footnote-75) There are some circumstances in which a private property may be sold, although the reason must generally be that there is an 'extreme need or an emergency'.[[76]](#footnote-76) Where a community member suffers harm, the Cordillera peoples acknowledge that a property may be given to the community as compensation.[[77]](#footnote-77)

Acquisition of land, according to tribes such as the people from Bontoc, Ifugao, Kankanaey, Kalinga, and other tribes in the Cordillera, is 'primarily a matter of occupying and then cultivating an area cleared of forest growth' and '[t]he first occupant to build a terrace on a site is considered its owner.'[[78]](#footnote-78)

Furthermore, although customary laws vary depending on the area of the country in which they are practised, they 'generally grant men greater access to land than women.'[[79]](#footnote-79)

* + 1. **What is the relationship between traditional legal ownership and customary ownership of land? Does the former override the latter?**

IPRAgoes some way towards defining the relationship between traditional legal ownership and customary ownership of land. Nonetheless, commentators suggest that IPs continue to 'struggle to uphold their rights' under IPRA due to inconsistencies with both the foundations of Filipino land law (ie the Regalian land doctrine), as well as numerous statutes such as the *Revised Forestry Code of 1975* (Presidential Decree No 705), *Mining Act of 1995* (Republic Act 7942) and *National Integrated Protected Areas System Act of 1992* (Republic Act 7586).[[80]](#footnote-80)

Where customary land ownership exists outside of statute, it is generally difficult to assert. It is also considered less authoritative than state law. This is consistent with the position in most Asian countries that, '[t]he formal status of customary law … is usually subordinate to written laws; and if it comes into conflict with written legislation – especially, but not limited to, constitutional legal provisions – customary law usually has to give way.'[[81]](#footnote-81)

* 1. Informal Settlements
		1. **What are the locations and boundaries of informal settlements?**

Informal settlements are a significant issue in the Philippines, and particularly prevalent in Metro Manila, where the slum population currently stands at four million people.[[82]](#footnote-82)

The Government has sought to address populations living in informal settlements through UDHA which among other things, intends to provide adequate housing at affordable cost for slum residents in resettlement areas. Despite this intention, limitations due to inadequate capabilities and funding at the LGU level and lack of cooperation and consultation with informal settlement residents has seen the conditions of urban slums worsen in recent years and the populations steadily increase. Eviction and demolition from both the government and private landowners is a constant threat.[[83]](#footnote-83)

A Housing Backlog Study commissioned by the Housing and Urban Development Coordinating Council (***HUDCC***) in 2007 showed the highest concentration of informal settlements was in Quezon City, within Metro Manila in the National Capital Region. Next was Rizal in CALABARZON and Davao City in the Davao Region.[[84]](#footnote-84) In 2010, the Metropolitan Manila Development Authority estimated that there were 2.8 million informal settlers or 556,526 families living in informal settlements in Metro Manila.[[85]](#footnote-85)

Initiatives to secure tenure for informal settlements are problematic for a host of different reasons. One of the key difficulties is that many are situated in areas deemed too dangerous for secure tenure. Approximately 50 per cent of the more than half a million informal settler families live along rivers or seashores, which are frequently affected by typhoons, seasonal rains sea surges and erosion. Some live in infill or open dumpsites (where most households will earn from scavenging) and along major highways which are heavily trafficked roads and corners or railroad tracks.[[86]](#footnote-86)

The Philippines Homeless People's Federation (***PHPF***) have demonstrated through projects that it is possible for people to voluntarily resettle to other lands if the current areas pose significant risk and if they are properly consulted with and feel they can negotiate supportive conditions for resettlement onto safe lands. One such project was in Iloilo, a city of over 40,000 households, including 16,754 households that were in informal settlements. From the wake of Typhoon Frank in 2008 until 2010, the PHPF laid out the relocation of nearly 2000 families to safer lands in San Isidro.[[87]](#footnote-87)

1. Security of Tenure of Vulnerable Groups
	1. Women
		1. **Can women own, rent or inherit land and housing?**

As of 2002, there are no longer formal restrictions on Filipino women owning, renting or inheriting land and housing, and this is similarly reflected in CARPER. However, the legal framework does not ensure women have full rights to property.[[88]](#footnote-88)

* + - 1. **Owning property**

Philippine property law under the Civil Code as well as Philippine family law under the Family Code are gender neutral, with men and women holding equal property rights.[[89]](#footnote-89) There are express provisions under the Family Code that cover cohabitation,[[90]](#footnote-90) and marriage.[[91]](#footnote-91) Assets acquired during cohabitation without marriage are jointly owned and one partner can act without the consent of the other. The marriage settlement is to determine the property regime between the husband and wife but in absence of such, both spouses jointly administer family property. Article 111 of the Family Code provides that a spouse in a marriage may retain exclusive management rights with regard to their exclusive property, without the need for the consent of the other spouse.

Article 96 of the Family Code provides that in the case of a disagreement, the husband's decision shall prevail, subject to the wife having recourse to the court for her property remedy within 5 years from the date of the contract implementing such decision. Article 63(2) of the Family Code provides that in the case of legal separation, the terms of dissolution of common property are determined by guilt, not by gender. Given that one of the major constraints on secure tenure in the Philippines is unequal access to legal recourse, article 96 is a strong example of how the law fails to safeguard women's full rights to property.

Family relations within the Muslim communities of the Philippines are governed by the Code of Muslim Personal Laws (the ***MPL Code***). This is particularly prevalent in Muslim Mindanao. Under the MPL Code, a wife needs the consent of her husband to acquire property during marriage and to use land.[[92]](#footnote-92)

* + - 1. **Renting property**

The Civil Code and Family Code also apply to renting property. There are therefore no explicit legal restrictions against women renting.

* + - 1. **Inheriting property**

As succession law in the Philippines is under the Family Code, it is also gender neutral. Additionally, article 900 of the Civil Code outlines that widows are necessary heirs of the deceased spouse. A married woman may also make a will without the consent of her husband and without the consent of the court, and she may dispose by will of all her separate property as well as her share of the conjugal partnership or absolute community property.[[93]](#footnote-93)

Under the MPL Code, wives only inherit half of the share inherited by men in a similar succession position.[[94]](#footnote-94)

* + 1. **In practice, do they? If not, why not?**

Customary practices and traditional patriarchal relations in families and communities still serve to inhibit women's access to land and property rights. This is steeped in history, where access to land and property has been a male domain.[[95]](#footnote-95) As above, customary laws for Muslim Filipinos mean that generally men have greater access to and enjoyment of land rights. This is particularly the case in Southern Muslim Mindanao. While the few sex-disaggregated studies on land are intermittent and dated, land administration agency data on the gender profile of beneficiaries indicate a significant gender gap between holders of land tenure instruments, particularly among married men and women.[[96]](#footnote-96)

In 2006, women comprised of 25 per cent of the total number of recipients of CLOAs.[[97]](#footnote-97) In the same year, only 18 per cent of leasehold contracts included women as leaseholders. Government figures show that out of a total of 2.3 million agrarian reform beneficiaries by the end of 2012, only 29 per cent were women.[[98]](#footnote-98)

This has not gone without notice by the Philippine government and laws have been enacted to ensure that women's legal rights to property are promoted and protected. For example, CARP provided equal rights to ownership of land. However, funding constraints slowed down its application which has subsequently limited its impact.[[99]](#footnote-99) In the wake of Typhoon Haiyan, mechanisms to ensure that land tenure documentation rightfully records women as owners of land were introduced.[[100]](#footnote-100) Under the *Magna Carta for Women*, women have 'priority rights',[[101]](#footnote-101) which include equal rights to the issue of registered land titles (patents),[[102]](#footnote-102) and as beneficiaries of land ownership under the Agrarian Reform Program.[[103]](#footnote-103)

Under the Fisheries Code, women are recognised as 'fisherfolk', and thus have equal entitlement to any land granted as part of any fisherfolk settlement program.[[104]](#footnote-104)

* 1. Indigenous groups

Under IPRA, ICCs and IPs are defined as:[[105]](#footnote-105)

a group of people or homogenous societies identified by self-ascription and ascription by others, who have continuously lived as organized community on communally bounded and defined territory, and who have, under claims of ownership since time immemorial, occupied, possessed and utilized such territories, sharing common bonds of language, customs, traditions and other distinctive cultural traits, or who have, through resistance to political, social and cultural inroads of colonization, non-indigenous religions and cultures, became historically differentiated from the majority of Filipinos.

The IPRA definition also applies to people who descend from populations inhabiting the Philippines prior to conquest or colonisation or the establishment of present state boundaries, who retain their institutions but have been displaced or remain outside of their ancestral domains.[[106]](#footnote-106)

The United Nations Development Program notes that the Philippines has approximately 14–17 million IPs, comprising 110 ethno-linguistic groups and predominantly inhabiting Northern Luzon (Cordillera), Mindanao and Visayas.[[107]](#footnote-107) Andersen suggests that IPs represent 12 per cent of the Filipino population,[[108]](#footnote-108) and Truong and Genotiva suggest that IPs represent 10–15 per cent of the population.[[109]](#footnote-109)

* + 1. **Is indigenous customary ownership (or custodianship) of land legally recognised?**

Indigenous customary ownership of land is legally recognised under IPRA, which grants IPs 'full authority to determine the extent and boundaries of ancestral lands through self-delineation … dispose of the resources inside their ancestral domains'.[[110]](#footnote-110) This is facilitated by IPs themselves engaging in a process of 'self-mapping and self-determination'.[[111]](#footnote-111) It has a number of key elements:

* + - 1. **General principles, whereby the state:**
				1. 'recognise[s] and promote[s] all the rights of Indigenous Cultural Communities / Indigenous Peoples … within the framework of the Constitution', including protecting rights to 'ancestral domains' and recognising customary law's application to 'property rights or relations in determining the ownership and extent of ancestral domain';[[112]](#footnote-112)
				2. recognises 'the inherent right of ICCs/IPs to self-governance and self-determination and respects the integrity of their values, practices and institutions';[[113]](#footnote-113) and
				3. shall not 'force indigenous individuals to abandon their lands, territories and means of subsistence, or relocate them in special centres for military purposes under any discriminatory condition.'[[114]](#footnote-114)
			2. **Recognition of rights to ancestral domains[[115]](#footnote-115) and lands:[[116]](#footnote-116)**
				1. IPRA recognises and protects rights of ownership and possession to ancestral domains, including rights to:

Claim ownership over lands, bodies of water;[[117]](#footnote-117)

Develop lands and use natural resources, including the 'right to effective measures by the government to prevent any interference with, alienation and encroachment upon these rights';[[118]](#footnote-118)

Not be removed from the territory without their 'free and prior informed consent, nor through any means other than eminent domain.' Furthermore, relocated people shall 'be fully compensated for any resulting loss or injury';[[119]](#footnote-119)

Be resettled where displacement has occurred, return to abandoned lands, and, enjoy security of tenure over resettled lands where an ancestral domain ceases to exist or return to a previous settlement is not possible;[[120]](#footnote-120)

Resolve land conflicts in accordance with customary laws;[[121]](#footnote-121) and

Redemption and to transfer land and property, subject to customary law and traditions.[[122]](#footnote-122)

* + - * 1. IPRA provides a mechanism for ICCs/IPs to obtain a CADT (issued by NCIP),[[123]](#footnote-123) which formally recognises 'rights of possession and ownership of ICCs/IPs over their ancestral domains identified and delineated in accordance with this law',[[124]](#footnote-124) as well as native title rights[[125]](#footnote-125) ('pre-conquest rights to lands and domains').[[126]](#footnote-126) Areas within the ancestral domains are presumed to be communally held,[[127]](#footnote-127) and property rights in ancestral domains already existing, or vested, are recognised and respected.[[128]](#footnote-128)
			1. **Identification and delineation of ancestral domains:**
				1. Identifying and delineating ancestral domains shall take place in accordance with procedures including delineating a perimeter, in coordination with the community and involving their 'genuine involvement and participation'.[[129]](#footnote-129)
				2. Government bodies cannot issue, renew or grant concessions, licences or leases, or enter certain agreements 'without prior certification from the NCIP that the area affected does not overlap with any ancestral domain'. The ICCs/IPs' free and prior informed consent is required.[[130]](#footnote-130)
			2. **Communal and individual claims**
				1. IPRA permits communal claims (concerning 'land, resources and rights thereon; belonging to the whole community within a defined territory'),[[131]](#footnote-131) and individual claims (concerning 'land and rights thereon which have been devolved to individuals, families and clans including, but not limited to, residential lots, rice terraces or paddies and tree lots').[[132]](#footnote-132)
				2. IPRA permits individual members of cultural communities in continuous possession and occupation of individually-owned ancestral lands since time immemorial or for not less than thirty years immediately preceding approval granted under IPRA to secure title to lands (where uncontested).[[133]](#footnote-133)

Therefore, IPRA contains numerous benefits, such as formally articulating a conception of indigenous ownership, whereby 'ancestral domains and all resources found therein shall serve as the material bases of their cultural integrity', and belong 'to all generations and therefore cannot be sold, disposed or destroyed'.[[134]](#footnote-134) Furthermore, it provides penalties for unauthorised and 'unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights' under IPRA.[[135]](#footnote-135) However, the Cordillera Peoples' Alliance contend that IPRA was 'hastily' signed and ineffective as Philippine land law continues to operate on the basis of the Regalian land doctrine. As the 'doctrine has never been formally invalidated, it continues to deny IPs' rights to their ancestral lands and resources to this day.'[[136]](#footnote-136)

* + 1. **Does customary ownership provide indigenous people with a high degree of security of tenure?**

Customary ownership recognised by a CADT or CALT provides a relatively strong degree of security of tenure. Those with certificates are formally acknowledged to have rights to those domains or lands. IPRA provides penalties for unauthorised and 'unlawful intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights' under IPRA,[[137]](#footnote-137) with punishment to occur in accordance 'with the customary laws of the ICCs/IPs concerned' provided that it is not 'cruel, degrading or inhuman punishment' or 'excessive'.[[138]](#footnote-138) Furthermore, access to resources may only occur with the ICCs/IPs' 'free and prior informed consent' and 'in accordance with customary laws',[[139]](#footnote-139) and IPRA provides a right for IPs to 'maintain, protect and have access to their religious and cultural sites'.[[140]](#footnote-140) These provisions have gone some way to protecting IPs.

Nevertheless, IPRA conflicts with a number of other statutes in the Philippines, such as:[[141]](#footnote-141)

* + - 1. *Mining Act of 1995* (Republic Act 7942);
			2. *Revised Forestry Code of 1975* (Presidential Decree No 705);
			3. *National Integrated Protected Area System Act of 1992* (Republic Act 7586); and
			4. Fisheries Code.

Thus, Marvic Leonen (currently an Associate Justice of the Supreme Court of the Philippines) has criticised IPRA for being a 'heavily compromised law' because it does not offer a solution to the tension between state and customary law.[[142]](#footnote-142)

* + 1. **If not, what are the barriers to indigenous people owning and/or living on their land?**

Although IPRA provides some protection to the tenure of ICCs and IPs, there have been many deficiencies in the law's implementation. As discussed above, there are many contradictions between IPRA and other Filipino laws, with the outdated Regalian land doctrine continuing to form the 'theoretical bedrock' of Philippine land law, dealing a 'fatal blow to Philippine indigenous concepts of land rights and land tenure.'[[143]](#footnote-143)

Therefore, one significant barrier to IPs owning and / or living on their land is the tension between Regalian land doctrine and other statist notions of land ownership, and customary law, including as recognised under IPRA. This inconsistency has permitted a 'massive land grab of IPs' domain', with many people formally using the system of land registration to steal ancestral lands from IPs.[[144]](#footnote-144) The procedure for applying for title registration is recognised to be extremely tedious, and many IPs are not aware of the need to register title at all. Therefore, IPs without an understanding of the Torrens system in place, or who are not aware of the benefits of obtaining a certificate under IPRA, are still susceptible to being dispossessed.

As Alcorn notes, '[p]oorly functioning land markets and some large-scale land acquisitions may threaten indigenous people' because, '[w]ithout secure tenure to land and water, indigenous peoples can easily lose their legal rights to natural resources by the stroke of a pen.'[[145]](#footnote-145) Thus, a key challenge for ensuring that indigenous tenure rights are protected is that many indigenous communities reside in areas which are rich in natural resources.

* + 1. **Is there conflict between indigenous groups regarding land ownership? Are there mechanisms for resolving these conflicts?**

IPRA contains a number of provisions to deal with conflict arising from indigenous land ownership. Section 15 provides that:

ICCs/IPs have the right to use their own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices within their respective communities and as may be compatible with the national legal system and with internationally recognised human rights.

Furthermore, the customary laws of the ICCs/IPs of the land on which the conflict arises are 'applied first with respect to property rights, claims and ownership, hereditary succession and settlement of land disputes'.[[146]](#footnote-146)

IPRA provides that the NCIP has jurisdiction 'over all claims and disputes involving rights of ICCs/IPs' where 'parties have exhausted all remedies provided under their customary laws' (with the Council of Elders/Leaders participating in the attempt to settle the dispute filing a petition with the NCIP).[[147]](#footnote-147) NCIP has the power to expropriate lands to resolve conflicts in the 'common good', permitting it to take legal action to cancel officially documented titles acquired illegally.[[148]](#footnote-148)

These dispute resolution mechanisms may be capable of resolving disputes between indigenous groups, such as by applying the customary law of two different groups (with NCIP as a mediator), or applying the customary law of the group on whose land the dispute occurs. Nevertheless, this is purely speculative as the dispute resolution provisions in IPRA appear to be primarily directed towards conflicts between IPs and non-indigenous parties. IPRA does not expressly envision conflicts between indigenous groups.

Furthermore, in the Cordillera region, 'boundary disputes have increased' since the implementation of IPRA.[[149]](#footnote-149) A notable example is a conflict over the delineation of ancestral domains between members of two clans of the Masadiit tribe in Abra.[[150]](#footnote-150)

* 1. Minority groups

We have not identified any additional minority groups in the Philippines that were not covered in [section 3.2](#Indigenous).

* 1. Landless people/informal settlers
		1. **Do landless people/informal settlers have rights to land and/or housing (eg, adverse possession)? If so, are those rights respected?**

The Philippines is said to have 'one of the worst land tenure problems in the developing world, with a high percentage of landlessness'.[[151]](#footnote-151) Furthermore, despite the government's efforts to reform land laws, 'the majority of rural people remain landless, and there is a swelling urban population living in informal settlements'.[[152]](#footnote-152)

It has been estimated that over one third of the population live in informal settlements or slums, and that, in Manila, over half of the population 'lives on riverbanks, bridges, railroad easements, cemeteries, garbage dumps and idle lands.'[[153]](#footnote-153) Beyond the metropolitan areas, 70 per cent of the 10.2 million marginal farm workers do not own land.[[154]](#footnote-154)

Although informal settling used to be illegal under *Presidential Decree No. 772, Penalizing Squatting and Other Similar Acts*, that decree was repealed by the *Anti-Squatting Law Repeal Act of 1997* (Republic Act 8368).[[155]](#footnote-155) The primary law which now regulates informal settlement is UDHA. In providing protection against arbitrary eviction of informal settlers, and demolition of their structures, UDHA can be seen to largely decriminalise informal settling and thereby provide 'recognition of informal tenure.'[[156]](#footnote-156)

According to US Aid, UDHA provides 'the legal framework for urban land reform and housing for informal settlers, slum dwellers and other underprivileged',[[157]](#footnote-157) although its application is limited to land in urban and urbanisable areas. There are penalties for violating UDHA, including up to six years' imprisonment and/or a fine of between five thousand and one hundred thousand pesos.[[158]](#footnote-158) UDHA provides:

* + - 1. for 'a comprehensive and continuing Urban Development and Housing Program' in association with the private sector which seeks to provide affordable housing to underprivileged and homeless citizens in urban areas and provide for an equitable land tenure system that guarantees security of tenure for beneficiaries;[[159]](#footnote-159)
			2. that socialised housing is 'the primary strategy in providing shelter for the underprivileged and homeless'.[[160]](#footnote-160) Modes of land acquisition under UDHA include a community mortgage, land swapping, assembly or consolidation, negotiated purchase and donation to the Government;[[161]](#footnote-161)
			3. that eligibility for a socialised housing program includes being an underprivileged and homeless Filipino citizen, not owning any real property and not being a professional squatter or a member of squatting syndicates.[[162]](#footnote-162) (Professional squatters are intruders of lands reserved for socialised housing, 'individuals or groups who occupy lands without the express consent of the landowner and who have sufficient income for legitimate housing', and who have previously been awarded government housing but disposed of it to settle illegally.[[163]](#footnote-163));
			4. 'measures to identify and effectively curtail the nefarious and illegal activities of professional squatters and squatting syndicates', with identified squatters or squatting syndicates able to be summarily evicted, have their structures demolished, be disqualified from UDHA's housing program, and potentially face a penalty of six years' imprisonment and/or a fine between sixty thousand to one hundred thousand pesos;[[164]](#footnote-164)
			5. that eviction or demolition are 'discouraged', although they may be permitted where danger areas such as railroad tracks or garbage dumps are occupied, when funded government infrastructure projects are about to be implemented, or when there is a court order for eviction and demolition. Conditions include that notice be given to underprivileged and homeless citizens at least thirty days prior, adequate consultation occur, government officials be present during eviction or demolition, which must occur under certain conditions and at certain times, and adequate relocation be provided.[[165]](#footnote-165) (Note that there is a moratorium on evicting program beneficiaries and demolishing their housing or dwelling units for three years from the effective date of UDHA, with some exceptions.[[166]](#footnote-166));
			6. that, within two years from UDHA being effective, government bodies 'shall implement the relocation and resettlement of persons living in danger areas' and ensure 'basic services and facilities and access to employment and livelihood opportunities';[[167]](#footnote-167) and
			7. that constructing structures, including illegal dwellings, in certain areas be prohibited.[[168]](#footnote-168)

In addition to the protections provided in UDHA, section 10 of IPRA prohibits unauthorised and unlawful 'intrusion upon, or use of any portion of the ancestral domain, or any violation of the rights' under IPRA.[[169]](#footnote-169) Furthermore, section 10 of Article XIII of the Constitution provides that:

Urban or rural poor dwellers shall not be evicted nor their dwellings demolished, except in accordance with law and in a just and humane manner. No resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

Section 2 of CARP sets out various principles and policies, including:

The welfare of the landless farmers and farm workers will receive highest consideration to promote social justice and to move the nation toward sound rural development and industrialization … a more equitable distribution and ownership of land shall be undertaken to provide farmers and farm workers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

Despite the benefits of CARP, however, concern has been expressed about its 'unintended impacts … on non-beneficiaries, especially the farmers that are still landless and poor' and that 'the ability of the poor and the landless to gain access to land through established markets appear to have declined over the course of the program period.'[[170]](#footnote-170)

* 1. Other groups
		1. **Which other persons or groups face difficulties in accessing or maintaining secure tenure (for example, due to internal displacement)?**

As of 2016, there were an estimated 87,000 internally displaced persons (***IDP***s) in the Philippines primarily due to natural disasters or violent conflict.[[171]](#footnote-171) As is discussed in [section 4.3(b) below](#Section43B), notwithstanding that a draft law has been discussed and redrafted for more than a decade, there are no Filipino laws that enshrine government protection for, or confer additional rights upon, IDPs. This absence of protection, combined with the reality that many IDPs have weak tenure rights to begin with, renders IDPs particularly vulnerable.

* + - 1. **Legal and practical difficulties for IDPs**

IDPs are vulnerable at the point in time at which they are displaced, and further disadvantaged when they attempt to return to their lands or relocate permanently.

Recently displaced IDPs experience unique difficulties, many of which are summarised in a 2015 article published by Europe Solidaire Sans Frontières:

* Some IDPs have difficulty finding refuge in host barangays, as staying with certain families may mean that they are perceived to have affiliations with groups involved in the armed conflicts;[[172]](#footnote-172)
* The Filipino Government provides no 'clear and consistent' advice to IDPs as to which areas are safe to move to or return to;[[173]](#footnote-173)
* This absence of authoritative information means that IDPs have limited ability to access their livelihood, which is often tied to their land;[[174]](#footnote-174)
* Government authorities are 'overwhelmed' by the large numbers of IDPs and there is '[n]o systematic registration system of IDPs.' Consequently, there is generally no reliable data collated that might assist in decision making and accommodating the needs of IDPs;[[175]](#footnote-175)
* The living conditions of newly displaced IDPs are inadequate. They have very limited access to safe drinking water, and generally live in 'makeshift houses' of laminate and tarpaulins.[[176]](#footnote-176) IDPs are likewise very vulnerable to crimes; for example, against women and children; and
* Unsurprisingly, disease, exploitation, abuse and poverty ensue. Conditions may even result in IDPs being recruited by different 'sides' of conflicts capitalising on their disadvantage and situation.[[177]](#footnote-177)

Even after the relevant conflict or natural disaster has subsided, IDPs experience difficulty returning home. Many IDPs do not have formal land ownership or rights associated with the land they were forced to flee, which can lead to disputes between parties as to who rightfully owns the land. One instance in which this may occur is where IDPs rented properties prior to a conflict or natural disaster — these IDPs are particularly vulnerable as they had no property to begin with.

Sometimes, returning to land may be obstructed by the 'no build zones,' which are zones that authorities have deemed to be excessively vulnerable to further attacks or disasters.[[178]](#footnote-178) In cases where IDPs have been forced to flee following violent conflict, IDPs can return to find their property and crops stolen or damaged.[[179]](#footnote-179) As was demonstrated by the 2013 Zamboanga conflict, IDPs that have weak tenure security over the land from which they fled, by virtue of that fact, may be precluded from government reconstruction assistance. As Kok reports, government can deem numerous IDPs 'informal settlers' and therefore exclude them from any reconstruction plan.[[180]](#footnote-180)

* + - 1. **Recent groups of IDPs in the Philippines**

Unfortunately, due to the prevalence and frequency of natural disasters in the Philippines, it is outside the scope of this report to collate an exhaustive list of the IDPs displaced due to natural disasters. However, recent large scale displacement are:

* Typhoon Nock-Ten, a category four storm that resulted in a mass evacuation of as many as 2.6 million people in the Bicol Region in late December 2016. The Typhoon resulted in 230,000 people initially being displaced, although this number dropped to 368 people by the end of January 2017;[[181]](#footnote-181) and
* Typhoon Haima, a category four storm on 19 October 2016 that resulted in the initial displacement of 148,000 people (with this number dropping to 37,000 by late October 2016) in Cagayan. The authorities pre-emptively evacuated 90,000 people, and it is estimated that the total number of damaged or destroyed houses exceeded 36,000.[[182]](#footnote-182)

In addition, there are ever increasing numbers of IDPs displaced due to conflict in the island of Mindanao, the second largest island in the Philippines. Numerous regions in Mindanao have suffered from, and continue to suffer from, violence from a range of conflicts, resulting in scores of civilians being forced to leave their homes. These groups include:

* Persons displaced following three weeks of fighting in September 2013 in Zamboanga City. This conflict was between the Armed Forces of the Philippines and a faction of the Moro National Liberation Front (***MNLF***) (a group of separatists with Islamic origins) following the MNLF's siege of Zamboanga and declaration that it was an independent region named 'Bangsamoro Republik.' This led to the displacement of at least 110,000 people and destruction of an estimated 10,000 homes. Most of the displaced belong to Muslim ethnic minorities who had no formal land ownership or tenancy rights in the area;[[183]](#footnote-183)
* Persons displaced due to the 46-year old conflict between the New People's Army (***NPA***) (an armed wing of the Philippines Communist Party) and the Filipino Government in eastern Mindanao. The conflict centres predominantly around political differences and is characterised by extortion and violence on the part of the NPA. According to a 2013 report by the Internal Displacement Monitoring Centre, around 44,000 people were displaced between 2008 and 2012 in some 85 incidents affecting 12 provinces in eastern Mindanao alone (primarily in Caraga and Davao). Most IDPs are Lumads, an ethnic group indigenous to Mindanao;[[184]](#footnote-184)
* Persons displaced by a 40 year old conflict between the Moro Islamic Liberation Front in central and western Mindanao. The conflict centres around the Moro Islamic Liberation Front's desire to establish an autonomous region independent of the Filipino government, and it is estimated millions of civilians have been displaced as a result;[[185]](#footnote-185) and
* Persons displaced by the Abu Sayyaf Group, a terrorist group with links to Islamic State who have a history of kidnapping and extortion, and have more recently engaged in armed conflict with the Government.[[186]](#footnote-186) It is estimated that clashes between the Government and Abu Sayyaf and Maute, another terrorist group with links to Islamic State, has resulted in the displacement of between 67,000 and 85,000 people from Marawi City.[[187]](#footnote-187) Marawi City has also been affected by a long history of land claims which date back to previous claims of ancestral domain and the Presidential Proclamations on Military Reservations.[[188]](#footnote-188)
1. Eviction, Expropriation and Relocation
	1. Evictions
		1. **Are there laws or regulations prohibiting forced evictions?**

While there are no laws prohibiting forced evictions per se, there are numerous protections under Filipino Law that provide that the government may only forcibly evict citizens in prescribed circumstances. These protections are in the Constitution, UDHA and IPRA.

**The Constitution**

The two main protections against forced eviction in the Constitution are:

Protections against arbitrary removal of the urban poor from their dwellings: Section 10 of Article XIII of the Constitution provides that 'urban or rural poor dwellers shall not be evicted nor their dwelling demolished, except in accordance with law and in a just and humane manner;' and

Ensuring that the state's right to compulsorily acquire privately owned land (or its 'eminent domain') is appropriately constrained: Section 9 of Article III of the Constitution states that 'private property shall not be taken for public use without just compensation.'

The laws giving effect to the protections for the urban poor in section 10 of Article XIII of the Constitution are contained in UDHA and its subordinate regulations, described in detail in subsection (ii) below. The circumstances in which the state may forcibly evict a landowner from his or her property are set out in further detail in [section 4.2 below](#Expropriation).

**UDHA**

UDHA gives effect to section 10 of Article XIII of the Constitution, effectively setting out the procedures that must be followed where seeking to evict the urban poor in circumstances where their settlements need to be used for urban development.

It is important to note that UDHA has broader coverage than one might initially assume an act that purports to regulate 'urban development' would. Section 4 states that UDHA applies to 'all lands in urban and urbanisable areas…and in other areas that may be identified by the LGUs as suitable for socialized housing.' 'Urbanisable areas' is defined in section 3 to mean 'sites and lands which, considering present characteristics and prevailing conditions, displaying marked and great potential of becoming urban areas within the period of five (5) years.' This broad definition, in conjunction with the local government's discretion to broaden the coverage of UDHA, means that it has potential to, and does, apply to many parts of the Philippines, and not simply its major cities.

However, notwithstanding this broad reach, section 5 of UDHA expressly provides that it does not extend to:

* any land included underCARP;
* lands used for national defense and security of the state;
* lands used, reserved or set aside for government offices, facilities or other installations (including those owned by government and LGUs);
* parks, reserves and areas necessary to maintain ecological balance or environmental protection (as determined by the relevant government agency); and
* lands actually and primarily used for religious, charitable, or educational purposes, cultural and historical sites, hospitals and health centres and cemeteries or memorial parks.

Though UDHA does prescribe legal procedures to facilitate lawful forced eviction where it is required for urban development, its overarching policy at section 28 generally discourages the practice; '[e]viction or demolition as a practice shall be discouraged.'

Notwithstanding this, forcible eviction is permissible under UDHA in the following circumstances:

* Where eviction is required for the prescribed purposes set out in UDHA (see (A) below); and
* Where evicting professional squatters (see (B) below).
	+ - * 1. **Public Purpose**

Section 28 of UDHA, entitled 'Eviction and Demolition' sets out the process for lawful eviction and demolition under UDHA. Eviction or demolition may be allowed in three prescribed situations:

* when persons or entities occupy danger areas such as railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
* when government infrastructure projects with available funding are about to be implemented; and
* when there is a court order for eviction and demolition.

Even where eviction and demolition is permissible under section 28, proper procedures must be followed. Where 'underprivileged and homeless'[[189]](#footnote-189) citizens are being evicted, UDHA prescribes the following 'mandatory' steps:

* At least 30 days' notice prior to date of eviction;
* 'Adequate' consultations on the matter of settlement with affected communities (including the communities where the evictees are to be relocated);
* Presence of local government officials or their representatives during eviction or demolition;
* Proper identification of persons taking part in the demolition;
* Execution of the eviction or demolition during regular office hours and good weather;
* No heavy equipment for demolition except for permanent or concrete structures;
* Police to wear proper uniforms; and
* Adequate relocation (whether permanent or temporary). However, where the eviction or relocation is pursuant to a court order, relevant LGU and National Housing Authority are to undertake relocation within 45 days of the service of the court's final judgment. Where relocation is not possible within that period, financial assistance (amounting to 60 days' minimum wage) shall be provided to the affected families by the relevant LGU.

Where underprivileged and homeless citizens are relocated, pursuant to section 21 of UDHA, the 'resettlement area' must have 'basic services and facilities', including potable water, electricity, sewerage facilities and access to roads and transport.

These procedures are set out in further detail in the subordinate rules to UDHA.[[190]](#footnote-190) Notably, these regulations provide that 'adequate social services in health, nutrition, education, responsible parenthood, environmental sanitation, etc. shall be provided in the resettlement sites' either by government or NGOs.

* + - * 1. **Evicting Professional Squatters**

Under section 27 of UDHA, professional squatters and squatting syndicates may be 'summarily evicted' and have their dwellings demolished. Furthermore, professional squatters shall receive a penalty of either six years imprisonment, a fine of between sixty thousand and one hundred thousand pesos or both.

'Professional squatters' are defined in section 3(m) of UDHA to refer to 'individuals or groups who occupy lands without the express consent of the landowner and who have sufficient income for legitimate housing.' Squatting syndicates are the groups 'engaged in the business of squatter housing for profit or gain.' However, the concept of 'professional squatters' does not include (and therefore the power to summarily evict does not extend to) individuals or groups who rent land from professional squatters or squatting syndicates.

**IPRA and indigenous forced eviction**

While forcible eviction by government under IPRA is not prohibited (as it is subject to the government's right to expropriate land), the legislation strongly discourages forcible eviction. Notably, section 7(c) of IPRA states that ICCs and IPs have 'the right to stay in the territory and not be removed therefrom' and that relocation will only be 'as an exceptional measure' with a guaranteed right of return where the grounds of relocation cease to exist. Finally, section 7(c) of IPRA provides that in the event of such relocation, 'persons thus relocated shall likewise be fully compensated for any resulting loss or injury.'

* + 1. **In practice, are those laws adhered to?**

Numerous local and international organisations have criticised the Filipino government for its failure to adhere to the protections against arbitrary removal of the urban poor from their dwellings under UDHA and the Constitution.[[191]](#footnote-191)

For example, the Centre on Housing Rights and Evictions (***COHRE***) strongly condemned the demolition of homes of one thousand families in April 2011 in the Laperal Compound of Makati City, Manila. Relevantly, COHRE reported that under the forced eviction:

No court order was issued sanctioning the demolitions and evictions, and no consultation, negotiation, or advance warning was provided to affected residents…Adequate housing has not been provided to those who were forced to leave the area…[[192]](#footnote-192)

COHRE concluded on this basis that 'the actions carried out on April 28th in Makati therefore appear to constitute breaches of national law, including the 1987 Constitution and [UDHA].' This is only one of many incidents.[[193]](#footnote-193)

Furthermore, groups have resorted to international human rights law in circumstances where they consider that the protections in UDHA have not been adhered to or judicially enforced. In the case of *Garsain et al. v. The Philippines*,[[194]](#footnote-194) residents of Corazon de Jesus (in Manila)[[195]](#footnote-195) made an individual complaint to the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights. The claim related to the eviction of 121 residents on 11 January 2012. According to the claimants, the following conduct occurred in breach of the Constitution and UDHA requirements:

* The notice of eviction was not personally given and received by affected families (resulting in many being unaware of the eviction) in contravention of the notice requirements in section 28 UDHA and its subordinate regulations;
* There were no reported instances of consultation regarding resettlement with community representatives prior to resettlement, contrary to section 28 of UDHA;
* Police attacked residents with fire trucks, bulldozers, tear gas and assault rifles to effect the eviction, contrary to the constitutional requirement to evict 'in a just and humane manner'; and
* Residents were relocated to areas declared as 'danger zones' (including a recent typhoon affected area) with inadequate housing, lack of employment or social services contrary to sections 28 and 21 of UDHA.[[196]](#footnote-196)

Please refer to the discussion in [section 4.2(b)](#Section42B) below with respect to the degree to which the constitutional laws constraining eminent domain are observed.[[197]](#footnote-197)

* 1. Expropriation of land
		+ - 1. **Are there laws or regulations permitting the government to expropriate land?**

The Filipino government has the right of 'eminent domain', which means that it has the power to expropriate any property within its territorial sovereignty for a public purpose. This right is an inherent power of the state, and conditions on its exercise are in the Constitution at section 9 of Article III; 'private property shall not be taken for public use without just compensation.'

In order to exercise its right of eminent domain, 'four essential elements' must be met:

* + - 1. the property to be expropriated must be private;
			2. the property must be used for a public purpose;
			3. there must be just compensation; and
			4. there must be due process of law in the expropriation.[[198]](#footnote-198)

The requirement to pay 'just compensation' is discussed in more detail at [section 4.4](#Section44a) below.

It should be noted that for the purposes of this power, 'property' includes franchises, contracts, copyrights and patents, but not money (except by taxation).[[199]](#footnote-199) While religious properties are not exempt from the power of eminent domain, as a matter of policy they are generally never expropriated.[[200]](#footnote-200)

The requirement at (ii), that the expropriation must be for a 'public purpose' has been broadly construed and utilised; it can include 'public utility, such as roads and bridges; public enjoyment, such as parks and plazas; and public services such as public hospitals and cemeteries.'[[201]](#footnote-201)

Perhaps the greatest constraint on the exercise of the government's right of eminent domain is the requirement at (iv), to afford 'due process of law.' The requirements for due process in expropriation proceedings at the Supreme Court in Philippines (the highest court in the Philippines) are set out in Rule 67 of the 1997 Rules of Civil Procedure, as amended (Rules 1-71, Rules of Court) (effective 1 July 1997) (***Supreme Court Rules***). Rule 67 of the Supreme Court Rules contains 14 sections. In summary, the state is required to file a complaint with respect to the expropriation, naming all defendants owning or occupying the land. The defendant may either defend or acquiesce to the expropriation. Where there is acquiescence, up to three court appointed commissioners will proceed to determine just compensation. Otherwise, the defendant is to file a motion to dismiss the complaint with appropriate defences. The court will then determine the issue (including quantum of compensation by reference to the decision of the independent commissioners, where appropriate). A final order by the court to expropriate the property may be appealed by any party aggrieved by it.

In addition to this general power of expropriation, there are other ad hoc statutes that permit expropriation for specified purposes (none of which could be utilised in a disaster context, and are therefore only relayed here in summary form). For example, the Filipino government has enacted legislation to expedite its ability to expropriate land specifically for the purpose of right of way locations for government infrastructure projects.[[202]](#footnote-202) Furthermore, Chapter V of CARPER permits expropriation to facilitate the allocation of agrarian areas. There are also mechanisms to expropriate land under UDHA, though pursuant to section 10, it must be used only when other models of acquisition have been exhausted.

Finally, the federal government's power of eminent domain can be, and has been, delegated to LGUs under theLocal Government Code. Section 19 of this Code provides that an LGU may exercise the power of eminent domain for 'public use' for the benefit of the poor and landless 'upon payment of just compensation'. Notably, this power is 'pursuant to the provisions of the Constitution.' Therefore, the requirements contained in the Constitution constraining the right to exercise the power of eminent domain apply to LGUs too. However, section 19 adds a further procedural step, and provides that local governments may not expropriate land unless a value and definite offer has previously been made to, and rejected by, the owner. It should be noted that case law authority has emphasized that this power is simply delegated, and 'the grant of the power of eminent domain to local governments under the Local Government Codecannot be understood as being the pervasive and all-encompassing power vested in the legislative branch of government.'[[203]](#footnote-203)

* + 1. **Are those laws or regulations applicable in the context of a disaster?**

While, theoretically, the power of eminent domain could most likely be invoked by federal or local governments on the basis that disaster housing would comprise a 'public purpose', the requirement that such power accord with due process would mean that it will be impractical to rely on this power.

There may be some scope to expedite due process by utilising the mechanism under section 2 of Rule 67 of the Supreme Court Rules. Under that section, upon filing of a complaint or at any time thereafter, the plaintiff may take possession of the real property so long as the market value of the property is deposited with the authorized government depositary. After that deposit is made, the court shall order the sheriff to take possession of the property.

However, even this provision for compulsory possession may be impractical in a disaster context; the plaintiff may only apply for possession 'after due notice to the defendant', and Rule 67 still permits the defendant to oppose the possession and expropriation generally. Therefore, any such possession would still be protracted and security of possession would be uncertain.

In summary, we have not identified any law that appears to, practically speaking, permit the government to expropriate land in the context of a disaster. We have set out more detail on the specific requirements below.

**The Disaster Act**

We have identified nothing inthe *Disaster Risk Reduction and Management Act of 2010* (Republic Act 1012) (the ***Disaster Act***), its implementing rules or the National Disaster Risk Reduction and Management Plan that permits the acquisition or usage of land in the context of a disaster.

Instead, the Disaster Act provides for a declaration of a 'State of Calamity,' which is defined in section 3(II) to be 'a condition involving mass casualty and/or major damages to property, disruption of means of livelihood, roads and normal way of life of people as a result of the occurrence of natural or human-induced hazard.' The declaration of a State of Calamity enables remedial measures to commence. Such measures include:

* the introduction of a price ceiling for basic necessities;
* provision for monitoring, prevention and control of overpricing and exploitative practices with respect to prime commodities, medicine and petroleum products;
* programming funds for the repair and upgrading of public infrastructure; and
* granting of no-interest loans by government financing or lending institutions to the most affected section of the population.

However, the declaration of a State of Calamity does not, for example, permit government expropriation of land without the requisite due process.

**Local Government Code Powers**

In addition to the delegated right of eminent domain, LGUs are conferred specific powers in times of natural disaster. Section 465(b)(1)(vii) of the Local Government Code permits the municipal mayor to supervise municipal government and provides that he or she shall:

carry out such emergency measures as may be necessary during and in the aftermath of man-made and natural disasters and calamities.

The phrase 'such emergency measures as may be necessary' is unqualified and, therefore, is capable of including expropriation of land. In fact, this power was used by LGUs following Typhoon Haiyan in 2015, after they had concluded that there was not enough land already owned by the government. However, there were practical impediments to expropriation at the government level. Importantly, many LGUs lacked sufficient funds to purchase privately held land. They required national or other assistance, and these funds were slow to arrive.[[204]](#footnote-204)

Furthermore, secondary source materials have indicated that, in practice, this power generally extends to LGUs identifying lands that are already public and allocating them as disaster relief locations.[[205]](#footnote-205)

* 1. Relocations
		1. **Are there laws or regulations governing relocations?**

There are protections in Section 10 of Article XIII of the Constitution with respect to resettlement of urban or rural dwellers: no resettlement of urban or rural dwellers shall be undertaken without adequate consultation with them and the communities where they are to be relocated.

Furthermore, there are numerous requirements with respect to the nature of resettlement locations and the timing of resettlement where resettlement occurs under UDHA, as detailed in [section 4.1(a)(ii) above.](#Section4iaii)

In addition to this, IPRA creates specific rights where relocations occur under that Act, as detailed in [section 4.2(a)(iii) above.](#Section42aiiiIRPA)

* + 1. **Are there any other laws or regulations (ie, human rights instruments) that are applicable to relocations?**

We have identified no other domestic laws or regulations applicable to relocations in the Philippines. We note that the most recent version of the draft 'Rights Of Internally Displaced Persons Act' has been under negotiation for more than a decade, and is currently with the Senate Committee, who is responsible for enacting it, should it choose to approve it.[[206]](#footnote-206) However, there is no indication from publicly available resources that this legislation will be enacted any time soon.

Notwithstanding the absence of domestic human rights instruments applicable to relocations, the Philippines is a State Party to a number of international human rights instruments. Relevantly in the case of relocation rights, the Philippines is a State Party to the *International Covenant on Economic, Social and Cultural Rights* (***ICESCR***) and therefore, pursuant to Article 11(1), is obliged to respect, protect and fulfill the right to adequate housing. This should, as a matter of international law, afford protections to relocated persons.

Despite this, as a matter of practice, the protections afforded by the ICESCR in the Philippines are limited. On 26 October 2016, the UN Committee on Economic, Social and Cultural Rights released its 'Concluding observations on the combined fifth and sixth periodic reports of the Philippines.' It noted that:

it is concerned at the substandard living conditions in collective bunkhouses for persons who are internally displaced as a result of natural disasters and armed conflict…In addition the Committee is concerned at the inadequate measures taken to provide appropriate relocation sites…who currently have to live in substandard living conditions without infrastructure and basic amenities, health care, education or transport facilities.[[207]](#footnote-207)

Further, recourse under the ICESCR is not readily available to persons who are relocated (or otherwise adversely affected by non-adherence by the State Party), as the Philippines has not accepted the individual complaints procedures under the Optional protocol to the International Covenant on Economic, Social and Cultural Rights.[[208]](#footnote-208)

* 1. Compensation for expropriation and relocation
		1. **Are there laws or regulations providing compensation for people who are relocated, forcibly evicted, or whose land is expropriated?**
			1. **Compensation for Forced Eviction**

No compensation is payable where the government has forcibly evicted:

* professional squatters or squatting syndicates; or
* other persons for the prescribed purposes set out in UDHA.

However, note there are relocation requirements where the evictees are 'underprivileged and homeless,' discussed at [section 4.1(a)(ii)(A) above.](#Section41aiiA)

* + - 1. **Compensation for Relocation**

The only laws that provide for compensation for relocation that we have identified are under IPRA, discussed at section [4.1(a)(iii)](#Section42aiiiIRPA) above.

* + - 1. **Compensation for Expropriation by State**

As stated in [section 4.1(a)(i) above](#Section41ai), section 9 of Article III of the Constitution states that 'private property shall not be taken for public use without just compensation.' This right is further enshrined in Article 435 of the Civil Code. Further, as mentioned above, acquisitions made under IPRA and CARPER require the payment of just compensation.

Lazo explains that the term 'just compensation' in the Constitution refers to the 'market value' of the loss sustained, plus consequential damages, minus any consequential benefits.[[209]](#footnote-209) Furthermore, just compensation includes any taxes and assessment paid by the owner with respect to the condemned property, interest and the value of crops.[[210]](#footnote-210) Sentimental value is not included in just compensation.[[211]](#footnote-211)

However, Article 436 of the Civil Code appears to introduce a further requirement to accessing just compensation. Article 436 provides that when property is condemned or seized by a competent authority in the interest of 'health, safety or security', the owner shall *not* be entitled to compensation unless he can show that such condemnation or seizure is unjustified. Therefore, in those circumstances, it would appear that it is far more difficult for an individual to recover compensation.

* + 1. **In practice, are these laws or regulations adhered to?**

In our efforts to ascertain whether these laws are adhered to, we reviewed secondary sources reporting on government expropriation in the Philippines.[[212]](#footnote-212) From this review, we have observed that:

* given that the due process requirements require court involvement and often independent consultants, it appears that the legal obligations to pay just compensation are usually met. However, quantum may be disputed between the parties; and
* most reported instances of expropriation are generally between the Philippines government and corporate bodies.

In short, there is nothing to indicate that expropriation compensation laws are not adhered to, other than reports of forced evictions, discussed at 4.1(b) (which are not described as expropriations, but which are, in substance, expropriations that have not followed due process or afforded compensation).

* 1. Shelter cluster
		1. **Is there an active shelter cluster in the country?**

There is currently an active shelter cluster, that was last active around Typhoon Haima, with the International Federation of the Red Cross listed as the 'Lead for Emergency'.[[213]](#footnote-213)

* + 1. **Has shelter cluster been activated during any previous disasters?**

**The following emergencies in Philippines have received shelter coordination support from the Shelter Cluster**:[[214]](#footnote-214)

* Typhoon Haiyan in 2013;
* Bohol Earthquake in 2013;
* Typhoon Bopha/Pablo in 2012;
* Tropical Storm Sendong in 2011;
* Typhoons Ketsana and Parma in 2009; and
* Typhoon Durian in 2006.
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*Fisheries Code of 1998* (Republic Act 8550)

*Indigenous Peoples Rights Act of 1997* (Republic Act 8371)

*Implementing rules and regulations to ensure the proper and humane relocation and resettlement procedures mandated by the Urban Development and Housing Act of 1992.*

*Land Registration Act of 1902* (Act 496)

*Land Reform Act of 1955*

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1. Glossary of abbreviated and defined terms

***ARC***: Australian Red Cross

***ARBs***: Agrarian Reform Beneficiaries

***AVAs***: Agribusiness Venture Arrangements

***AVA Bill***: House Bill No 5085

***CA 141***: *Commonwealth Act 1936*

***CA 2259***: [*Cadastral Act of 1913*](http://www.chanrobles.com/acts/actsno2259.html) (Act 2259)

***CADTs***: Certificates of Ancestral Domain Titles

***CALABARZON***: Cavite, Laguna, Bantangas, Rizal and Quezon

***CALTs***: Certificates of Ancestral Land Title

***CARL***: [*Comprehensive Agrarian Reform Law of 1988*](http://www.lawphil.net/statutes/repacts/ra1988/ra_6657_1988.html)(Republic Act 6657)

***CARP***: Comprehensive Agrarian Reform Program

***CARPER***: CARP as amended by [*Comprehensive Agrarian Reform Program Extension with Reforms of 2009*](http://www.lawphil.net/statutes/repacts/ra2009/ra_9700_2009.html) (Republic Act 9700)

***Civil Code***: *Civil Code of the Philippines 1949* (Republic Act 386)

***CLOAs***: Certificates of Land Ownership Awards

***CMP***: Community Mortgage Program

***COHRE***: Centre on Housing Rights and Evictions

***Constitution***: *1987 Constitution of the Republic of the Philippines*

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***Council***: Council of Elders of the Cordillera peoples

***DAR***: Department of Agricultural & Agrarian Land Reform

***DENR***: Department of Environment and Natural Resources

***Disaster Act***: *Disaster Risk Reduction and Management Act of 2010* (Republic Act 1012)

***DOJ***: Department of Justice

***EPs***: Emancipation Patents

***Fisheries Code***: [*Philippine Fisheries Code of 1998*](http://www.lawphil.net/statutes/repacts/ra1998/ra_8550_1998.html) (Republic Act 8550)

***HUDCC***: Housing and Urban Development Coordinating Council

***HUCs***: highly urbanised cities

***ICCs***: indigenous cultural communities

***ICESCR***: International Covenant on Economic, Social and Cultural Rights

***IFRC***: International Federation of Red Cross and Red Crescent Societies

***IPs***: indigenous peoples of the Philippines

***IPRA***: *Indigenous Persons Rights Act of 1997* (Republic Act 8371)

***Local Government Code***: [*Local Government Code of 1991*](http://www.lawphil.net/statutes/repacts/ra1991/ra_7160_1991.html) (Republic Act 7160)

***LGUs***: Local Government Units

***LRA***: Land Registration Authority

***MNLF***: Moro National Liberation Front

***MPL Code***: Code of Muslim Personal Laws

***NCIP***: National Commission on Indigenous Peoples

***NPA***: New People's Army

***OMCT***: World Organisation Against Torture

***PHPF***: Philippines Homeless People's Federation

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***Supreme Court Rules***: 1997 Rules of Civil Procedure, as amended (Rules 1-71, Rules of Court) (effective 1 July 1997)

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101. Section 20 of the *Magna Carta for Women* *2009* (Republic Act 9710). [↑](#footnote-ref-101)
102. Section 20(b)(1) of the *Magna Carta for Women 2009* (Republic Act 9710). [↑](#footnote-ref-102)
103. Section 20(b)(2) of the *Magna Carta for Women 2009* (Republic Act 9710). [↑](#footnote-ref-103)
104. Section 2(e) of the *Fisheries Code 1998* (Republic Act 8550). [↑](#footnote-ref-104)
105. Section 3 of IPRA. [↑](#footnote-ref-105)
106. Ibid. [↑](#footnote-ref-106)
107. Above n 71. [↑](#footnote-ref-107)
108. Above n 33, p 14. [↑](#footnote-ref-108)
109. Luong Thi Truong and Orlando M Genotiva, *Recognizing Ethnic Minority Customary Land Rights in Vietnam and the Philippines* (Centre of People and Forests / Economic and Social Research Council, 2010) <<http://recoftc2.dev.dotography.net/sites/default/files/old/uploads/wysiwyg/docs/Vietnam_Briefs_Eng_PDF/RECOFTC_21July10_B5_web.pdf>>. [↑](#footnote-ref-109)
110. Above n 21, p 22. [↑](#footnote-ref-110)
111. Ibid p 22. [↑](#footnote-ref-111)
112. Section 2 of IPRA. [↑](#footnote-ref-112)
113. Section 13 of IPRA. [↑](#footnote-ref-113)
114. Section 22 of IPRA. [↑](#footnote-ref-114)
115. Ancestral domains are 'areas generally belonging to ICCs/IPs … held under a claim of ownership, occupied or possessed by ICCs/IPs' and held 'communally or individually since time immemorial, continuously to the present' except when interrupted by certain factors such as war, displacement or deceit: see section 3 of IPRA. [↑](#footnote-ref-115)
116. Ancestral lands are lands 'occupied, possessed and utilized by individuals, families and clans who are members of the ICCs/IPs since time immemorial, by themselves or through their predecessors-in-interest, under claims of individual or traditional group ownership, continuously, to the present except when interrupted by certain factors': see section 3 of IPRA. Furthermore, ancestral lands and domains include the 'total' environment, including spiritual and cultural bonds to areas: see section 4 of IPRA. [↑](#footnote-ref-116)
117. Section 7 of IPRA. [↑](#footnote-ref-117)
118. Ibid. [↑](#footnote-ref-118)
119. Ibid. [↑](#footnote-ref-119)
120. Ibid. [↑](#footnote-ref-120)
121. Ibid. [↑](#footnote-ref-121)
122. Section 8 of IPRA. [↑](#footnote-ref-122)
123. Section 44 of IPRA. [↑](#footnote-ref-123)
124. Section 3 of IPRA. [↑](#footnote-ref-124)
125. Section 11 of IPRA. [↑](#footnote-ref-125)
126. Section 3 of IPRA. [↑](#footnote-ref-126)
127. Section 55 of IPRA. [↑](#footnote-ref-127)
128. Section 56 of IPRA. [↑](#footnote-ref-128)
129. Section 52 of IPRA. [↑](#footnote-ref-129)
130. Section 59 of IPRA; 'Free and informed' consent means the 'consensus of all members, determined in accordance with customary laws and practices, free from interference or coercion, and obtained after fully disclosing the intent and scope of the activity, in accessible language and processes': see section 3 of IPRA. [↑](#footnote-ref-130)
131. Section 3 of IPRA. [↑](#footnote-ref-131)
132. Ibid. [↑](#footnote-ref-132)
133. Section12 of IPRA. [↑](#footnote-ref-133)
134. Section 5 of IPRA. [↑](#footnote-ref-134)
135. Section 10 of IPRA. [↑](#footnote-ref-135)
136. Above n 73, pp 269, 296. [↑](#footnote-ref-136)
137. Section 10 of IPRA. [↑](#footnote-ref-137)
138. Section 72 of IPRA. [↑](#footnote-ref-138)
139. Section 35 of IPRA. [↑](#footnote-ref-139)
140. Section 33 of IPRA. [↑](#footnote-ref-140)
141. See generally Mencio Molintas, *The Philippine Indigenous Peoples' Struggle for Land and Life: Challenging Legal* Texts (2004) 21 Arizona Journal of International and Comparative Law p 269, quoting Raumundo D Rovillos and Victoria Tauli-Corpuz, *Special Rapportueur on Indigenous Peoples' Rights: Philippine Misión* 5 (2002). [↑](#footnote-ref-141)
142. Ruth Sidchogan-Batani, *Implementation of the Indigenous Peoples Rights Act (IPRA) in the Philippines: Challenges and Opportunities* (Background Paper, Expert Seminar on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Peoples, Geneva, Office of the United Nations High Commissioner for Human Rights, 15–17 December 2003); ibid. [↑](#footnote-ref-142)
143. Above n 73 . [↑](#footnote-ref-143)
144. Ibid pp 269, 291–2. [↑](#footnote-ref-144)
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148. Section 64 of IPRA. [↑](#footnote-ref-148)
149. Above n 142, pp 269, 297. [↑](#footnote-ref-149)
150. Ibid, pp 269, 297. [↑](#footnote-ref-150)
151. Above n 15, p 14 . [↑](#footnote-ref-151)
152. Above n 79, p 3. [↑](#footnote-ref-152)
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154. Ibid p 5. [↑](#footnote-ref-154)
155. Above n 21, p 65. [↑](#footnote-ref-155)
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157. Above n 79, p 5. [↑](#footnote-ref-157)
158. Section 45 of UDHA. [↑](#footnote-ref-158)
159. Section 2 of UDHA. [↑](#footnote-ref-159)
160. Section 15 of UDHA. [↑](#footnote-ref-160)
161. Section 10 of UDHA. [↑](#footnote-ref-161)
162. Section 16 of UDHA. [↑](#footnote-ref-162)
163. Section 3(m) of UDHA. [↑](#footnote-ref-163)
164. Section 27 of UDHA. [↑](#footnote-ref-164)
165. Section 28 of UDHA. [↑](#footnote-ref-165)
166. Section 44 of UDHA. [↑](#footnote-ref-166)
167. Section 29 of UDHA. [↑](#footnote-ref-167)
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