

# **Agrarian Reform Lands, Public Lands and Ancestral Domains in the Philippines: Jurisdictions and Contentious Issues**

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## **ABSTRACT**

*The respective jurisdictions of concerned agencies with respect to public and ancestral lands are defined in DAR-DENR-LRA-NCIP Joint Administrative Order (JAO) No. 1, Series of 2012. The principles of agrarian reform, stewardship and ancestral lands are observed in accordance with law, in the disposition or utilization of natural resources, including lands of the public domain suitable to agriculture, subject to prior rights, homestead rights of small settlers and the rights of indigenous communities to their ancestral lands. The JAO addresses the operational issues and conflicting claims between and among the three (3) agencies, DAR, DENR and NCIP. While there are mechanisms in place under the JAO, there are still conflicts and overlaps identified which hamper the implementation of land use and reform programs.*

## **INTRODUCTION**

The Department of Agrarian Reform (DAR) and Department of Environment and Natural Resources (DENR) implement the agrarian reform program for private agricultural lands and public lands through the Comprehensive Agrarian Reform Program (CARP) pursuant to Republic Act (R.A.) No. 6657 as amended.

DENR is responsible for the conservation, management, development and proper use of the country's environment and natural resources as well as the licensing and regulation of the use of all natural resources as may be provided by existing laws (DAR-DENR-LRA-NCIP Joint Administrative Order (JAO) No. 1, Series of 2012).

The National Commission on Indigenous Peoples (NCIP) implements the Indigenous People's Rights Act (IPRA) which was enacted in 1997 through R.A. No. 8371.

### **Ancestral domains in the Philippines**

Ancestral domains include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by indigenous cultural communities or indigenous peoples (ICCs/IPs) but which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators (IPRA, Chapter 2).

DAR-DENR-LRA-NCIP Joint Administrative Order (JAO) No. 1, Series of 2012 was issued to resolve jurisdiction and operational issues among agencies regarding the

implementation of the Comprehensive Agrarian Reform Law (CARL), IPRA and the Public Lands Act or Commonwealth Act 141.

**Agency jurisdictions**

Jurisdiction of the three (3) agencies with respect to public and ancestral lands are defined in DAR-DENR-NCIP Joint Administrative Order No. 1, Series of 2012 and summarized in the table below:

DENR	All lands of the public domain ( <i>i.e.</i> , agricultural lands, forest or timber lands, national parks and mineral lands) except those placed by law and other issuances under the operational jurisdiction of other government agencies
DAR	All alienable and disposable lands of the public domain devoted to or suitable to agriculture: 1. DAR resettlement projects with Presidential proclamation and for distribution to qualified beneficiaries; 2. Lands placed by law as under the jurisdiction of DAR; and 3. previously proclaimed for the use of government agencies and instrumentalities and subsequently turned over to DAR
	All lands of the public domain in excess of the specific area limits as determined by Congress
	All other lands owned by the government devoted to or suitable for agriculture
	All private lands devoted to or suitable for agriculture regardless of the agricultural products raised or that can be raised thereon.
NCIP	All lands encompassed in the definition of ancestral domains as defined in the IPRA
	All lands covered with presidential proclamations as reservations or resettlement areas of ICCs/IPs
	All lands certified by the NCIP as ancestral domains/ancestral lands (AD/AL) pursuant to the IPRA.

**Recognition of the rights of the ICCs/IPs, agrarian reform beneficiaries (ARBs) and patentees based on JAO 1, Series of 2012**

The rights of the ICCs/IPs over their ancestral domain lands are protected to ensure their economic, social and cultural well-being. Systems of land ownership, land use, and modes of settling land disputes of the ICCs/IPs are recognized and respected in line with the principle of self-determination and autonomy.

The principles of agrarian reform or stewardship, are observed in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain suitable to agriculture, subject to prior rights, homestead rights of small settlers and the rights of indigenous communities to their ancestral lands.

The Certificate of Land Ownership Award (CLOA), Emancipation Patent (EP) and other land titles awarded by DAR under the agrarian reform program and registered in the name of a beneficiary serves as evidence of title and ownership to the land. It entitles the beneficiary to occupy the land, cultivate, maintain possession of the same and avail of the support services provided under the program.

A patentee (by DENR) as the recognized owner, exercises property rights over the land granted to her/him except for some restrictions over the land under as well as the maintenance of legal easement if the land borders the sea or river.

**Recognition of existing property rights.** Property rights within ancestral domain lands already existing and/or vested upon the effectivity of [R.A. No. 8371](#) are respected. These include titles issued administratively and judicially (*i.e.*, EPs, CLOAs, Free

Patents/Homestead Patents and other titles issued under the Agrarian Reform Program and patents issued by the DENR).

***Right to avail support services for ICCs/IPs under CARP.*** Holders of CARP Beneficiary Certificates (CBCs) are eligible for support services under CARP subject to securing free and prior informed consent of ICCs/IPs who will be affected by the implementation of such support services projects.

***Parks, Wildlife, Forest Reserves, Reforestation, Fish Sanctuaries and Other Areas.*** Pursuant to [R.A. No. 6657, as amended](#), lands actually, directly and exclusively used for parks, wildlife, forest reserves, reforestation, fish sanctuaries and breeding grounds, watershed and mangroves are excluded from the coverage of CARP.

### **Contentious areas/issues**

The JAO addresses the following operational issues and conflicting claims between and among the three (3) agencies, DAR, DENR and NCIP:

1. Untitled lands being claimed by the ICCs/IPs to be part of their ancestral domain lands which are covered by approved survey plans and also being claimed by DAR and/or DENR;
2. Titled lands with registered CLOAs, EPs and Patents within ancestral domain lands;
3. Resource access or development instruments issued by the DENR over lands within ancestral domain lands such as: Community Based Forest Management Agreement (CBFMA), Certificate of Stewardship Contract (CSC), Certificate of Forest Stewardship Agreement (CFSA), Wood Processing Plant Permit (WPPP), Special Land Use Permit (SLUP) and other related agreements and permits.
4. Exploration Permit (EP), Financial or Technical Assistance Agreement (FTAA); Mineral Agreement (either Production Sharing, Co-Production or Joint Venture) issued within CARP covered areas.
5. Reservations, proclamations and other special law-declared areas a portion or the entirety of which is subsequently issued a certificate of ancestral domain/land title.
6. Areas with existing and/or vested rights after the registration of the ancestral domain titles or ancestral land titles.
7. Formal complaints filed by concerned ICCs/IPs or by the NCIP in behalf of the ICCs/IPs over those identified titled areas found within the ancestral domain lands.
8. Other jurisdictional and operational issues that may arise and may be determined by the joint committees at the national, regional and provincial levels, as created under the DAR-DENR-NCIP JAO.

### **Mechanisms to prevent and resolve contentious areas/issues at the national and field levels**

1. *Projection of survey plans to determine overlaps.* The need for improving standards and processing of survey plans among agencies was recognized as a critical step to minimize occurrence of overlaps. Based on the JAO, all survey plans processed by NCIP, DAR and DENR shall be in accordance with the Manual of Land Surveys in the Philippines. Overlapping of titled properties or approved survey plans within the AD/AL as determined by the LRA, DENR and DAR requires an endorsement or certification to that effect by the Land Registration Authority (LRA).

2. *Segregation of titled properties.* The survey plan together with endorsements or certifications are returned to the NCIP for segregation/exclusion of titled properties from the survey plan and the technical description of ancestral domain land. The NCIP is responsible for securing necessary information as reference in the segregation/exclusion process while DAR and DENR furnish the NCIP the survey data pertinent to the segregation/exclusion process.
3. *Final projection.* The ancestral domain land survey plan, as amended, shall then be submitted to the LRA, DENR and DAR anew for final projection.
4. *Notification of NCIP of specific areas for titling.* Based on the JAO, DAR and DENR must notify NCIP before processing or further processing applications for land titles pursuant to their respective mandates regarding conflict areas of the specific area to be titled and the former shall certify on projection of survey plans and issuance of certification of non-overlap, whether the same affects an ancestral domain land.
5. *Joint National Committee.* To facilitate the identification of contentious or potentially contentious areas, the concerned agencies are required to submit to the Joint National Committee an initial list of conflict or overlapping areas with pertinent documents within fifteen (15) days from the creation of the Joint National Committee.

## **Implications**

According to Quizon and Pagsanghan, 2014, a major contention has been on the jurisdiction over claimed forest lands, as the revised Forestry Code of 1975 stipulates that “all lands above 18 degrees slope automatically belong to the state and classified as forest lands”. Yet large areas of ancestral domain lands have slopes of 18 degrees and above. They added that the JAO which sought to address this problem resulted to the net effect of freezing the issuance of new titles for ancestral domains to due to conflicting claims.

Based on 2014 estimates, a total of 77,000 hectares of untitled private agricultural lands should be covered under the agrarian reform program but cannot be transferred to farmer-beneficiaries , as the land ownership needs to be resolved first under the DENR.

## **CONCLUSION**

While there are mechanisms put in place under the JAO, there are still conflicts and overlaps identified which hamper the implementation of land use and reform programs affecting the public, private and those considered to be covered by ancestral domains. Further review and adjustments within the legal framework and the land administration framework need to be conducted.

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