

Society & Natural Resources

An International Journal

ISSN: 0894-1920 (Print) 1521-0723 (Online) Journal homepage: <https://www.tandfonline.com/loi/usnr20>

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To cite this article: Renée V. Hagen & Tessa Minter (2019): Displacement in the Name of Development. How Indigenous Rights Legislation Fails to Protect Philippine Hunter-Gatherers, *Society & Natural Resources*, DOI: [10.1080/08941920.2019.1677970](https://doi.org/10.1080/08941920.2019.1677970)

To link to this article: <https://doi.org/10.1080/08941920.2019.1677970>



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Published online: 04 Nov 2019.



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Displacement in the Name of Development. How Indigenous Rights Legislation Fails to Protect Philippine Hunter-Gatherers

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ABSTRACT

Yearly, development-induced displacement affects some 20 million people, a disproportionate share of whom are indigenous. Within the diverse category of indigenous peoples, hunter-gatherers are especially vulnerable to displacement as they form the least powerful sectors of society. While displacement poses a major threat to the few remaining hunter-gatherer peoples, case studies of how this process unfolds are scarce. This ethnographic study details how two decades of indigenous land rights legislation have been ineffective in preventing displacement of indigenous communities in the Philippines, through the case of Agta hunter-gatherers of Dimasalansan. The paper demonstrates how procedural inconsistencies, institutional competition and a development paradigm focused on commodification of land have undermined the legal titling process. We argue that the ensuing land-rush that currently displaces Agta is symptomatic for how the implementation of indigenous land rights legislation is undermined by business interests, thereby creating more uncertainty than certainty for the least powerful.

ARTICLE HISTORY

Received 17 February 2019
Accepted 29 September 2019

KEYWORDS

Agta; collective land rights; development-induced displacement; hunter-gatherers; indigenous peoples; Philippines; legal uncertainty; Southeast Asia

Introduction

Over the past decades, the number of people that are annually displaced by land grabs has multiplied. “Land grabbing” refers to the transfer of control over large areas of land or water from local control to more powerful outsiders (both domestic and foreign) for industrial, agricultural, conservation or tourism-related development (Borras et al. 2012; Edelman et al. 2013). It is symptomatic of a neoliberal process in which land is commodified and moved from local people to private companies and wealthy elites, natural resources are appropriated, and alternative, indigenous, forms of production and consumption are suppressed. As Harvey (2003, 145; 2007, 159) argues, this process will lead to ever increasing levels of social inequality and instability, and is contingent on and promoted by policies of the state.

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In the current decade (2011–2020), each year, an estimated 20 million people are forcibly displaced by development projects (Cernea and Maldonado 2018, 1) and a growing body of literature addresses land grabbing and the resulting development-induced displacement and resettlement (DIDR, hereafter displacement) (e.g. Drèze, Samson, and Singh 1997; Chatty and Colchester 2002; Levien 2013; Neef and Singer 2015; Cernea and Maldonado 2018).

A disproportionate share of displaced people are indigenous (McCully 1996; UN 2009, 88–89). However, few studies specifically address the displacement of hunter-gatherers (Hitchcock and Holm 1993; Tacey 2013; Athayde and Silva-Lugo 2018), who arguably are among the most vulnerable and marginalized indigenous populations.

This paper contributes to this still limited empirical record on how displacement of hunter-gatherers unfolds on the ground, by providing a qualitative, ethnographic account of how a particularly marginalized indigenous group of hunter-gatherers in the Philippines is being displaced from the coasts and forests on which they have historically depended economically and culturally, to give way to tourism and infrastructural development. In the absence of reliable government data on relocation, especially in contested areas, it is vital to generate micro-level empirical records that enable assessing the scope and impact of displacement.

Our case also highlights the widespread phenomenon of legal uncertainty, which denotes the gap between the rules and acts produced by the legal system and what happens in practice. This gap is present everywhere, but especially so in the developing world (Oomen and Bedner 2018, 10; Otto 2002). Moreover, the most vulnerable individuals and groups tend to enjoy the least legal certainty (von Benda-Beckmann 2018, 84), hunter-gatherers among them (Persoon and Minter 2018, 43).

Displacement of hunter-gatherers

Acknowledging that indigenous peoples have disproportionately suffered from displacement by land grabs for industrialization, agriculture, conservation and tourism (see McCully 1996, 70; Colchester 1999), their rights to land and resources have become increasingly recognized in international conventions, such as the International Labor Organization convention (International Labour Organization (ILO) 1989¹), the Rio Convention on Environment and Development (UN 1992) and ultimately the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP², UN 2007). Major development and financing institutions have moreover adopted relatively encompassing definitions of what constitutes displacement. For instance, according to the World Bank (2001, OP 4.12 para. 3), displaced persons are not only those people who have involuntarily lost their land (and associated shelter, assets and livelihoods), but also people who suffer from restricted access to land and resources.

Crucially, Free, Prior and Informed Consent (FPIC) has become a key requirement for projects that risk causing displacement. FPIC is the internationally recognized right of indigenous populations to be fully informed, prior to its start, on the foreseen negative impacts and potential benefits of any intervention on their lands, livelihoods and social and natural environment; and to give or deny the consent for these activities to those proposing them without manipulation or force. In short, it is the right of

indigenous peoples to be fully, and freely involved in decision making processes on activities that may displace them (UN OCHA 2004; UN 2007³; Minter et al. 2012).

Nonetheless, displacement continues to be among the most significant threats faced by indigenous peoples around the world (UN 2009). Hunter-gatherers, in particular, are vulnerable to displacement because of the economic and political fragility of their lifestyle, which is inherently dependent on local ecosystems and starkly contrasts with the highly structured and politically organized nation-states with whom they negotiate their access to and control over land. Moreover, widespread prejudice against foraging people, and a lack of recognized leadership which is characteristic of egalitarian hunter-gatherers, impede their representation and advocacy for tenurial security (Woodburn 1997; Madsen 2000).

As relocation away from traditional lands has far-reaching implications for hunter-gatherer economy and culture, resettlement does not provide a suitable alternative to the use of these lands (Madsen 2000; Persoon 2000; Jehom 2013; Awuh 2015; Lueong 2016). Loss of land and displacement have been linked to poor indigenous mental and physical health conditions (Chandler and Lalonde 2008; Reading and Wien 2009; Walls and Whitbeck 2012; Vaggia and Snodgrass 2015; Anderson et al. 2016). In contrast, “being on the land”, by hunting or fishing, is reported by Inuit youth in the Nunatsiavut region as important protective factor for mental well-being (MacDonald et al. 2015), as is “being on country” for Australian indigenous peoples (Ganesharajah 2009).

Legal uncertainty

While in many instances indigenous peoples’ tenurial insecurity can be linked to the lack of legislation that allows for collective land ownership (Rights and Resources Initiative 2015), this is not the case in the Philippines, which has taken a progressive stance towards indigenous land rights since the early 1990s. The Department of Environment and Natural Resources (DENR) adopted various policy measures that allowed for indigenous settlement and resource use in protected areas, as well as collective ownership claims to “ancestral” lands (DENR 1992). In 1997, this policy framework gained considerable strength with the enactment of the Indigenous Peoples’ Rights Act (IPRA), which allows for legal title to such lands⁴ and prohibits outsiders to undertake any activities on ancestral land without the indigenous communities’ FPIC (NCIP 1997). The Philippines also endorsed the UNDRIP (UN 2007), which further consolidates the country’s commitment to indigenous rights, including their right to land.

However, its implementation often being problematic, the existence of indigenous rights legislation in itself does not guarantee tenurial security (e.g. Stocks 2005; Reyes-García et al. 2012; Burger 2019), nor does it ensure legal certainty more broadly (von Benda-Beckmann 2018). Exemplary of this is the uncertainty experienced by First Nations in Canada (Nikolakis and Hotte 2019), whose land rights are recognized in the Canadian constitution. Yet, because collaborative governance agreements are negotiated case-by-case and results differ each time, considerable uncertainty and mistrust arises.

Attention for more empirical understandings of legal (un)certainty, and “a view from below”, i.e. an analysis based on local perspectives, remains far too scarce (Oomen and Bedner 2018, 10, 14). Otto (2002) has suggested that in order to generate “real legal certainty”, one minimally needs, firstly, clear, consistent, and accessible legal rules,

issued by or on behalf of the state; and secondly, government institutions that apply these rules and comply with them themselves. The “view from below” that we present here, demonstrates that neither of these two conditions are met.

We will here document the ongoing displacement of Agta from their ancestral lands in a coastal area called Dimasalansan, despite national legislation ruling against such displacement. Dimasalansan is situated within the Northern Sierra Madre Natural Park (NSMNP) in the northeast of the Philippine island Luzon, which was established to protect the largest remaining primary tropical forest of the country and 84 globally threatened species (Tan 2000; van Weerd and Udo de Haes 2010; Mabuwaya Foundation 2018). However, as legislation is poorly enforced the NSMNP has been called a “paper park” (van der Ploeg et al. 2011).

Agta living in and adjacent to the NSMNP⁵ subsist on a combination of fishing, gathering, hunting, trade of forest products, extensive farming and seasonal labor (Minter 2010). They share their environment with descendants of farming migrants who have settled along the coast and in the forest interior from the 1950s onwards (Griffin 1989; Headland 1986), and although Agta living in the NSMNP have usufruct and settlement rights in the park (DENR 1992; 2001), they do not legally own the land.

As we will detail below, while the struggle for the Agta’s legal ownership of the land in the NSMNP under the IPRA has been ongoing for two decades, it is characterized by institutional competition, conflict and lack of results. However, the urgency of obtaining a legal title has become ever greater, as several development projects are currently unfolding. In 2016, the construction of a road between the City of Ilagan and Divilacan commenced after a limited and culturally insensitive consultation process. This road traverses the Sierra Madre mountain range and the protected area, and will provide access to the currently isolated coasts. To further boost the coastal area’s accessibility, mangroves and lowland tropical forests have been cleared for an airport that is currently being built.

Although proponents of these infrastructural projects emphasize the economic advantages they will bring, history shows that Agta are invariably heavily impacted by the ecological and social costs, while minimally benefiting from the opportunities generated. Less than 200 km south of Divilacan, a road which opened up the previously secluded San Idefonso Peninsula in Casiguran in 1977 had detrimental effects on Agta livelihoods, health, nutrition and socio-cultural well-being (Headland 1986, 292; Early and Headland 1998). A subsequent development scheme creating a special economic zone in the same area in 2007 displaced resident Agta, and resulted in the killing of several resisting Agta individuals (Cruz et al. 2013). Just as the road to Casiguran has become the “major change-causing agent” for the San Idefonso Agta (Headland 1986, 292), so will the Ilagan-Divilacan road likely be for the Dimasalansan Agta.

Methods

Our findings are based on recent data collected by RVH, and grounded in ethnographic research in the same study sites conducted over the past two decades by TM. For the discussion of ancestral land rights, we used data from the second author’s PhD dissertation (Minter 2010, 258–263). This research was conducted with permission from the

relevant municipal and village authorities, and following the ethical principles for the conduct of research and obtaining consent from informants as commonly accepted within the discipline of anthropology (AAA (American Anthropological Association) 2012; Pels et al. 2018).

Data collection

Main data collection by the first author took place from February through July 2016 in the municipality of Divilacan, among the Agta communities of Dibakeyan (21 individuals), Dialinawan and Dimakapoot (28 individuals) and those living on the beach in the Divilacan municipal center (37 individuals). Collectively, we refer to these different communities as Dimasalansan Agta, after the larger peninsula on which they live. In a focus group discussion, six men and four women from Dimasalansan were asked to draw a map of the inland, coastal and marine areas used by Agta, marking boundaries, burial sites and locations that are important for livelihood activities. The map was drawn in sand, using pebbles and shells as markers. Each marked area was visited by the first author and one or two informants, and the GPS coordinates of these locations were recorded. The land use and cultural significance of these locations was discussed through informal interviews with those participating in the mapping exercise and an additional four informants (one woman, three men). Based on semi-structured interviews with six Agta informants (three women and three men) who were selected for their knowledge on the subject, we compiled a list of all households that were displaced due to land rights issues in Divilacan (see below). In addition, we held semi-structured interviews on the process of displacement with 15 Agta (six women, nine men) including those individuals who compiled the list) and three non-Agta community members (one woman, two men), two village leaders (both men), and two employees of Divilacan's municipal government (one man and one woman), as well as officials from the regional and national offices of the National Commission on Indigenous Peoples (NCIP) in Ilagan and Manila. Interview topics included land and water used for subsistence and residence, communications about displacement, and compensation.

In the context of indigenous populations in general, and hunter-gatherer populations in particular, seeking Free, Prior and Informed Consent (FPIC) is simultaneously crucial and fraught with pitfalls and risks (Persoon and Minter 2018). We have maximized efforts to follow an FPIC process that is both transparent and culturally sensitive and meaningful. Therefore, written free, prior and informed consent to perform the study and create a map of the contested part of the ancestral domain was asked during a community meeting in Dikabeyan. During this meeting we explained the purpose of our study and welcomed community members to ask questions, underlining that participation was voluntary and that consent could be withdrawn at any time. Consent was thus an ongoing process, and before each interaction we again discussed our study goals and sought additional verbal consent of all informants. Communication proceeded in Ilocano, a local language used by Agta to communicate with outsiders, with the assistance of a local translator.

Reliability and data analysis

The reliability of our qualitative data was maximized through the combined processes of triangulation of both our methods and data sources (Bryman 2016, 574) as well as data saturation (Morse et al. 2002). The dataset on displaced individuals was obtained by asking the six informants independently from each other and on separate occasions to state which households had left these settlements, how many members these households had, why, and to where they relocated. Whenever data from one informant differed from that given by others, we subsequently checked this information with the others. In addition, we used a list of names provided by the local government to elicit more responses from our informants. A similar method of data saturation was used in obtaining information on the process of displacement, by interviewing community informants, as well as local, regional and national government officials, and using institutional reports from government and non-government agencies until the point that no new information arose.

Manual coding of specific interview data was done by the author who had collected them, by first labeling interviews according to specific topics, followed by reorganizing data in separate text files per topic (keeping the link between specific information and informants intact). The overall analysis in an integrated text and the selection of informants' quotes as representing core topics was done in close conversation between authors.

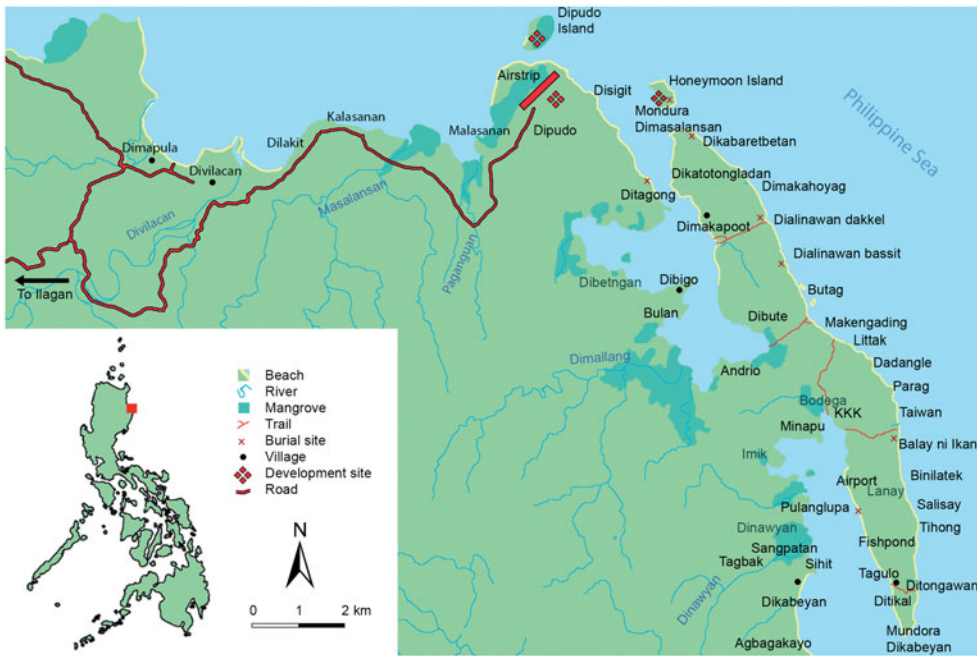
Results

The dramatic long-term impacts of relocation have their source in what Oliver-Smith (2010, 11) aptly summarizes as “[...] uprooting people from the environments in which the vast majority of their meaningful activities have taken place and on which much of their understanding of life is based”. This too, is the essence of the case that we will detail below.

Agta sense of place

Dimasalansan Agta are tied to their coasts and forests in different ways that have to do with settlement, livelihood and religion. Although descendants of migrants now inhabit the NSMNP, many rivers, mountains, beaches, reefs and settlements are still known by names that are derived from Agta nomenclature (Map 1). These often relate to natural features, such as *Dikabeyan*, meaning “place with many beaches”, and *Dikatotongladan*; “place with many sandflies”. Influence of recent social developments is evident from English (e.g. Fishpond) and Tagalog terms (e.g. *Bodega*, which translates into storage and refers to the location where logging equipment was stored).

Kinship binds people to these areas through a system of cognatic descent, i.e. each Agta individual considers him/herself to be the descendant from a certain Agta couple who are believed to be the first occupants of that area. Kinship connections, through blood and marriage, define access to land and resources (Minter 2010; Headland 1987). Individuals and families tend to move between settlements of two to twenty nuclear households connected through coastal and inland footpaths. Mobility differs between households and individuals and is highest during the dry season. Housing varies



Map 1. Participatory map of Divilacan's coastal region, with the Dimasalansan peninsula on the right.

between temporary lean-to structures, open huts and timber-walled houses with tin roofing.

The Dimasalansan Agta's livelihood primarily depends on the marine environment, although inland resources are important too. Women collect small reef fish, shellfish, octopi, crabs and seaweeds from shallow reefs and mangroves, and men catch a variety of bigger reef fish and cray-fish species using spears and various types of nets and traps.

While hunting was part of Dimasalansan Agta's livelihood up to one generation ago, it has been abandoned as game can no longer be found within one day's hiking distance. However, the forest still is an important gathering ground for other products, notably for edible, medicinal and ritual plants, rattan and timber, fruits and honey. Wild tubers are collected sporadically, and rice, obtained from neighboring farmers, has become the dominant staple. Agta in Dimasalansan do not grow rice themselves, but they do plant fruits and vegetables on small swiddens. Marine and forest products are sold to or bartered with non-Agta communities and traders. In addition, Agta engage in paid labor on rice farms and in construction.

Most Agta consider the mountains and coasts to be home to a variety of spirits, and roughly distinguish between two types (Minter 2010). The first of these is associated with specific environmental features such as caves, rock formations, water sources and large trees (often *Ficus spp.*). Informants told us that passing these spirit-inhabited places may cause illness, injury, bad luck in hunting or fishing, or loss of possession and is therefore avoided. Ancestral spirits, on the other hand, are the spirits of deceased relatives, who are not necessarily considered malicious, but can be angered by disrespectful behavior, such as wasting food, and by trespassing or disturbing burial sites. Agta burial sites are found along the entire Dimasalansan Peninsula (Map 1), and Agta protect these by covering

graves with small bamboo or wooden structures and by maintaining tree cover in the surrounding area. Immediately following burial and sometime thereafter, food offerings are made at the grave, but otherwise burial sites are avoided or passed with care.

Ancestral land rights

The Agta's close relationship with their coasts and lands has not gone unnoticed by government organizations and NGOs, as is clear from a lengthy record of attempts to provide them with tenurial security. In the course of the 1990s the DENR⁶ granted three ancestral domain claims, together covering over 45,000 ha, to Agta groups in and around the NSMNP⁷. However, as these were neither based on ground-surveys nor on consultations their value was insignificant (van der Ploeg et al. 2016, 153–154; Magaña 2003).

With the IPRA's enactment in 1997, ancestral domain claims could be converted into legal titles, the responsibility for which came to rest with the newly formed National Commission on Indigenous Peoples (NCIP). A task force was installed to support this process in the NSMNP, consisting of two foreign-funded conservation projects⁸, Agta representatives, NGOs, the NCIP, the DENR, the office of the Protected Area Superintendent and municipal governments. In 2001–2002 the task-force developed detailed maps and plans for 15 ancestral domains which were based on ground surveys of the claimants' actual living areas and hunting-gathering grounds (Minter 2010, 259–261).

Despite their real-life value, the NCIP did not approve these plans because it argued that Agta have historically inhabited the entire Sierra Madre Mountain Range, not just isolated patches within it. From 2005 onwards, it has therefore pursued to have an estimated 2500 km² of unbroken land and marine area titled, all of which overlaps with the NSMNP (pers. comm. B. Garcia, Provincial Head NCIP Isabela, 2007). In 2006–2007 the NCIP collected census data, genealogies and evidence of long-term Agta occupation, and began boundary delineation. However, following resistance from the DENR, and municipal and village governments, who accused the commission of neglecting park management goals and non-Agta communities' interests, these activities were stalled.

Recognition of the paralyzing effect of institutional competition on ancestral land titling has so far only generated more paperwork. In 2012 and 2017, Joint Administrative Orders were issued to determine that the titling process of a contested area (like the NSMNP) can only be continued if an agreement is reached between all government agencies involved⁹; and that boundary delineation must be conducted by composite DENR-NCIP teams¹⁰. Effectively, these two orders have resulted in ancestral land titling procedures throughout the country having been put to halt. The NCIP confirmed that there is no prospect of the Agta's case being resolved in the near future (pers. comm. R. Bastero, NCIP Director Region II 2018).

The displacement of Agta from dimasalansan

Amidst this impasse, ambitions to economically develop the previously isolated coast fuel several development projects that have a major impact on Agta of Dimasalansan (Map 1).

Firstly, an 82 km road that cuts through the NSMNP is being constructed between Ilagan and Divilacan. The construction of this road is funded through a 1.6 billion pesos (US\$31 million) loan from the Development Bank of the Philippines¹¹, which in its Social Policy Statement commits to “Comply with local, national and international regulations and conventions applicable to social considerations of projects, including indigenous peoples [...]” (DBP 2016). The Environmental Impact Statement Report (SPCICD 2012), a legal requirement for obtaining an Environmental Compliance Certificate (ECC) (without which construction cannot start), states the following on the potential impact of the road on Agta communities:

The road construction will be a good economic diversion for the IPs [Indigenous Peoples] from their usual hunting or fishing activities. [...] With regard to the migration of people from other areas, the IPs will be exposed to the way of life of the migrant population. The possibility of mixed marriages between the IPs and migrant population and of adoption of the culture and ways of the migrant population is always there. (SPCICD 2012, 4-1)

And about displacement:

[...] if displacement or relocation from their settlements cannot be avoided, [...] PGI (The Provincial Government of Isabela, the proponent of the project), shall endeavor to relocate the affected members of the IPs and shall be responsible in the construction of their houses/shelters. Thus, relocation of livelihood/business and dwelling/camps [...] shall be formulated. (SPCICD 4-1/2)

The ECC for the road was issued by the DENR without any questions about these impact statements. A Memorandum of Agreement to formalize the consent of the entire Agta population of the NSMNP for the construction of the road through their ancestral lands was signed by the Provincial Government of Isabela, the NCIP and 14 male Agta representatives in 2011 (SPCICD 2012, Annex 10.3). Two Agta signatories are from the Dimasalansan/Dipudo area; all others originate from hamlets in the interior of the municipality of Divilacan along the proposed road. The basis on which they were selected as signatories is unknown to us, but it is noteworthy that three also serve as indigenous members of the management board of the NSMNP.

Plans to turn the area into an international tourism destination have led to further infrastructural development. In 1990, Honeymoon Island, a small island on the northern tip of the Dimasalansan peninsula, was bought by a local politician. For years, this did not change much for the resident Agta, who continued to live and fish around the island as they had done before.

However, by mid-2014 rumors that Agta around Honeymoon Island and the peninsula had to give way for tourism development became increasingly consistent, although at the time no government officials confirmed this. An Agta man from Dimasalansan expressed his concerns as follows: “Our problem now is that this place is going to be developed. I don’t think this is a good thing. For them [developers/government], development is good. But it won’t be the same for us because they want us to leave. [...] if tourists arrive here, what kind of work can we do when we even don’t know how to talk to them? That’s why [...] we are not part of the progress of this place. [...] those who are in the government, when they come here, they tell us that they will help us rise from poverty. But until now we don’t feel it. Instead, they will eventually make us leave.” (pers. comm. anonymous informant 2014).

In 2015, Roundscad Corporation began the construction of a resort on Honeymoon Island, built a 1.5 km runway in tropical rain forest and mangroves at Dipudo and claimed the adjacent Disigit beach. Nearby Dipudo island was purchased by foreign investors and turned into a high-end camp-site.

There was no FPIC procedure for these construction activities: resident Agta were not informed and did not participate in the decision-making process. As one community member explains: “They did not coordinate with us that they would build the airport, we only knew when they started. We did not oppose to them, because we know with these things, if you oppose them you are dead” (pers. comm. anonymous informant 2016). On several occasions promises for monetary compensation were made, as was confirmed by community members and local government officials, but no Agta or non-Agta received such payments.

In May 2016, Roundscad informed Agta from the northern half of the Dimasalansan peninsula that its beaches and reefs, as well as Honeymoon Island were off-limits for settlement, fishing and gathering. This order would displace at least 122 people from 38 households, in the sense that their land was “involuntary taken” and their “access to land and resources was involuntary restricted” (terminology used in World Bank 2001, OP 4.12).

The majority of these, 71 people from 20 households, are known to have abandoned the area out of fear of (violent) repercussions. During field visits in June 2016, all six households formerly residing in Dikabaretbetan and Dimakahoyag, and 14 out of 32 households that previously settled at Disigit, Dimakapoot, Dikatotongladan and Dialinawan had left. Of the 20 households that relocated, most moved to the beach of the nearest town, Divilacan (Table 1).

While local government officials have certainly noticed these relocations, they tend to trivialize both their cause and consequences: “Agta are moving away [from Disigit], but I don’t know why. Maybe it’s because they are not used to living around [non-Agta] people. Also, it is just their tradition to move.” (pers. comm. village official 2016) “Agta have always moved from place to place, just as they do now; moving around is part of their tradition” (pers. comm. local DENR official Divilacan 2016).

Yet, the nature of the ongoing relocations is very different from “traditional mobility” and the consequences for Agta communities and individuals are severe, as can be sensed from the following statement: “Along the beaches and in the forest, this land is where we can get our food. The beaches here are the only ones that are still of the Agta, but they are making us squatters in our own place” (pers. comm. anonymous informant 2016). Furthermore, the impact of displacement is not limited to livelihoods, but has deeply personal consequences: “We have buried our ancestors here. In our tradition, we are not to leave their burial sites” (pers. comm. anonymous informant 2014).

Table 1. Number of people affected by development projects in Dimasalansan as per June 2016.

Place name	No. of people affected but still in place	No. of people displaced	Total no. of people affected
<i>Dialinawan</i>	4	0	4
<i>Dikabaretbetan</i>	0	19	19
<i>Dimakapoot</i>	24	25	49
<i>Disigit</i>	23	23	46
<i>Dikatotongladan</i>	0	4	4
Total	51	71	122

More generally, Agta's tie to their ancestral land is key to their identity: "This [the peninsula] is where we grew up, just like my parents, and their parents and theirs. This is where we should live and die" (pers. comm. anonymous informant 2016).

Discussion

In spite of solid indigenous rights legislation with a strong emphasis on FPIC, the Philippines' last hunter-gatherer population is being displaced by land grabs in the name of development. How can we explain this alarming situation? In the remainder of this paper we will argue that this state of overwhelming legal uncertainty is rooted first, in the relatively marginal position that indigenous rights have within the dominant Philippine development paradigm and ideology; and second, in the deeply held prejudice against and misconceptions of Agta, which result in a twisted framing of the implications of displacement.

Institutional competition

Dimasalansan is situated in one of the remotest and poorest regions of the Philippines, and economic strategies towards developing the region have historically focused on "tapping" its natural resources. While the forestry and mining sectors have long dominated the region's economy, tourism development is central to its development aspirations for the current period (NEDA 2017). As this development paradigm is naturally biased towards proponents of development projects, the interests of different government agencies do not all have equal weight.

Thus, in its encounters with the Provincial Government of Isabela, the Development Bank of the Philippines, as well as the government departments responsible for environment and natural resources, mining, infrastructure and tourism, the NCIP takes a relatively marginal position in terms of size, budget, staffing and, ultimately, political power. The commission's limited leverage is especially evident from the earlier mentioned 2012 and 2017 Joint Administrative Orders, which in effect institutionalize other government agencies' veto over the NCIP's ancestral land titling program.

Cultural misconceptions

The ideology of progress that permeates this dominant development paradigm inhibits a culturally sensitive analysis of its social impacts. Thus, despite the well-documented damaging effects of road-building and business development on the San Ildefonso Agta in Casiguran (Headland 1986; Cruz et al. 2013), the earlier quoted Environmental Impact Statement Report conveniently frames the explicitly foreseen consequences of the Ilagan-Divilacan road as invariably positive. While it indeed fully anticipates a future influx of farming populations, this is not considered a risk but an opportunity for Agta to "divert from hunting and fishing" and "adopt the migrant's way of life" (i.e. sedentary farming) (SPCICD 2012, 4).

The same applies to the laconically formulated statements about anticipated relocation. By only mentioning that the Provincial Government will be responsible for

“construction of their [Agta’s] houses/shelters”, the impact statement reveals indifference towards the socio-cultural implications of relocation. Similarly, the Development Bank of the Philippines, which funded the road construction with a loan, has shown lack of serious consideration of its own policy to comply with indigenous peoples’ rights legislation.

This indifference is related to various persistent misconceptions. The first of these is that Agta’s mobility implies “rootlessness” and consequentially, indicates that they can live anywhere, as is evident from above quoted statements by local government officials. Such stereotypes of Agta as wandering nomads conveniently downplay their strong sense of place. Second, the above cited prediction of the road facilitating Agta’s transitioning from hunting-gathering to sedentary farming reveals the paternalistic misconception that a settled life will be a better life, which has characterized government institutions’ view of Agta for centuries (see Minter 2017).

However, especially when it happens forcefully and rapidly, sedentarization brings great risks to previously mobile peoples. Often, sedentarization programs are implemented on marginal land where livelihood options are limited (e.g. Headland and Headland 1997; Awuh 2015). Alarming, Page et al. (2018) demonstrate that sedentarized Agta experience higher occurrence of parasitic infection and higher child mortality, due to the combination of increased population densities and externally imposed, culturally insensitive sanitation and medical service provisioning.

Legal uncertainty

FPIC is arguably the most powerful instrument to create legal certainty for indigenous groups. The fact that it hasn’t worked to that effect in the Philippines (Minter et al. 2012; Cruz et al. 2013; Buenafe-Ze and Telan 2016; Bracamonte 2018) often rests in a lack of meaningful, genuine and culturally sensitive implementation (Persoon and Minter 2018).

A key challenge here is representation, as significant heterogeneity in attitudes towards land use may exist within communities, and individual preferences do not simply aggregate into a collective viewpoint (Nikolakis et al. 2016). Meaningful representation in FPIC procedures is specifically problematic among hunter-gatherers, who often do not recognize formal leadership. While individuals are selectively appointed by project proponents as representatives or spokespersons of the larger Agta community, they lack real authority or political power. The Memorandum of Agreement between the Provincial Government of Isabela, Agta and NCIP about construction of the Ilagan-Divilacan road is presented as proof of FPIC, even though this involved only 14 Agta signatories from a limited area, whose ability to represent the wider affected Agta population is questionable.

Moreover, there is no evidence that the Agta signatories have been presented with the full range of possible consequences of road construction. During an interview in August 2014, one anonymous informant who witnessed the signing of the agreement said he regrets it: “We did not think about the negative sides, and nobody told us. [T]he representatives of the government said the road would allow us to sell our fish at a good price in Ilagan [across the mountain range].”

The Agta's situation of overwhelming legal uncertainty in a country with extensive indigenous rights legislation underscores that very often "the law is not enough" (Castillo and Castillo 2009) to protect marginalized peoples against accumulation by dispossession. Indeed, key conditions for generating legal certainty (Otto 2002) are not met.

First, the legal rules issued by and on behalf of the state, are not always clear, not (easily) accessible (at least not for illiterate hunter-gatherers), and not consistent. Overlapping and sometimes conflicting mandates of laws, policies and their implementers, create institutional competition and a wild-growth of additional documents and processes aimed at legal and policy "harmonization". In the ensuing confusion, a space for multiple interpretations arises that tends to serve the interests of the powerful.

Second, government institutions do not apply rules consistently, nor do they comply with them themselves. Legal responsibilities regarding FPIC, Environmental and Social Impact Assessments, and ultimately displacement that are stipulated in local, national and international law are loosely interpreted at best. In such situations, more law may lead to less legal certainty, especially for the least powerful (von Benda-Beckmann 2018, 90; see also van der Ploeg et al. 2016).

Conclusion

The undesirability of development-induced displacement is generally acknowledged by the UN, the major development banks and many national governments. A growing body of safeguards issued by all of these institutions is in place to prevent displacement, and yet displacement is still highly prevalent around the world, particularly among indigenous peoples (Neef and Singer 2015; Cernea and Maldonado 2018), including those of the Philippines (Choi 2015; Gaspar 2015; Drbohlav and Hejkrlik 2017).

We have demonstrated how indigenous rights legislation fails to generate legal certainty for Philippine hunter-gatherers, who are among the most vulnerable indigenous populations. At the time of writing (early 2019) at least 122 Agta individuals had been displaced, of whom 71 people involuntary relocated, for the sake of infrastructure and tourism development.

The Agta case signifies how a misrepresentation of mobile hunter-gatherers as not being place-bound, is used to justify their displacement and trivialize the severe impacts that relocation, sedentarization and an influx of farming immigrants will have on their well-being. The case further shows how egalitarian hunter-gatherers are especially vulnerable to exploitation through their lack of political representation structures: in this situation, individuals selectively appointed by outsiders but with no recognized political authority among Agta, are conveniently but falsely portrayed as representatives of the wider community. The net effect is that FPIC procedures are easily directed to serve the position of proponents of development projects. Ultimately, the case exemplifies how human tragedy unfolds behind a veil of "policy harmonization", which essentially masks unwillingness to implement indigenous rights legislation.

The ongoing and illegal displacement of Agta from Dimasalansan sets in motion an irreversible process of cultural disintegration, conflict and health degradation. The solution is as clear-cut as it is urgent. If the Government of the Philippines is serious about the well-being of its last hunter-gatherer population and its own indigenous rights

legislation, it will put an immediate end to the displacement and involuntary relocation of its indigenous constituents in Divilacan and guarantee them tenurial security to the areas from which they originate.

Notes

1. Article 13[1].
2. Article 26[1].
3. Article 10.
4. Ancestral lands (or domains) are defined as “all areas generally belonging to [indigenous communities or peoples] comprising lands, inland waters, coastal areas, and natural resources therein, held under a claim of ownership, occupied or possessed by [indigenous communities or peoples] themselves or through their ancestors, communally or individually since time immemorial” (IPRA 1997).
5. Agta descend from Australoid peoples who arrived in what is today called the Philippines over 40,000 years ago and later intermixed with Austronesian peoples (see Delfin et al. 2014). Around 20% of the total Agta population today (an estimated 10,000 individuals) live in or adjacent to the NSMNP (Minter 2010).
6. Under Administrative Order 1993-02 (see http://policy.denr.gov.ph/1993/Land_dao93-02.pdf).
7. Between 1993 and 1998, a total of 181 such claims were issued to indigenous communities nationwide, together covering 2.5 million ha (Aquino 2004, 73).
8. A World Bank/GEF funded project (1994–2002) and a Dutch-funded project (1996–2003).
9. DENR-DAR-LRA-NCIP Joint Administrative Order 2012-1 (see: <https://ncip12.files.wordpress.com/2012/07/joint-dar-denr-lra-ncip-administrative-order-no-01-series-of-20122.pdf>).
10. DENR-NCIP Joint Administrative Order 2017-1 (see: <https://server2.denr.gov.ph/uploads/rmdd/jao-2017-01.pdf>).
11. See <https://www.devbnkphl.com/news.php?id=210>

Acknowledgements

This research could not have been conducted without the help of all informants, who welcomed us in their community and the commitment and hard work of our research assistants (whom we will not name here as to protect their identity). We further thank Jan van der Ploeg and three anonymous reviewers for their constructive and helpful comments to earlier versions of this paper.

Funding

The research received funding from the Society for the Advancement of Research in the Tropics.

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