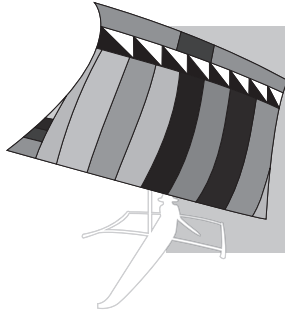


4 Mindanao Economic Policy Papers **Land Tenure and Agribusiness Investment in Muslim Mindanao**

by Roehlano M. Briones, Ph.D.





The **Mindanao Economic Policy Papers** were prepared as part of the work led by Dr. Cielito F. Habito, AusAID Adviser for Mindanao Economic Development to examine constraints to investment and economic development in Mindanao, especially in Muslim Mindanao, and determine appropriate ways to address them. Conduct and preparation of the studies were administered by Brain Trust: Knowledge and Options for Sustainable Development Inc., and undertaken between August 2011 and July 2012. Hence, any recent developments and changes subsequent to that period would not be reflected in the policy papers.

Mindanao Economic Policy Papers **LAND TENURE AND AGRIBUSINESS INVESTMENT IN** **MUSLIM MINDANAO**

By Roehlano M. Briones, Ph.D.

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Mindanao Economic Policy Papers
LAND TENURE and AGRIBUSINESS
INVESTMENT in MUSLIM MINDANAO

by
Roehlano M. Briones, Ph.D.

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I. Statement Of The Problem

Owing largely to its superior agro-climatic conditions, agriculture and agribusiness will continue to be the primary driver of the Mindanao economy in general and Muslim Mindanao in particular. The strategic role of agriculture holds both for traditional commercial crops such as bananas, pineapple and coconut, as well as other high value horticultural crops (Dy, 2011).

This is particularly true for Muslim Mindanao. In 2009, agriculture accounted for 58% of real ARMM GDP, compared to only 18% for the country. Unfortunately over the period 1995-2009, growth of agricultural GDP in ARMM averaged only 2.8%, even lower than the agricultural GDP growth of 2.9% for the country. Hence ARMM GDP grew by an average of only 3.1%, compared to 4.2% nationally. This bodes ill for the region's prospects of catching up in terms of income and human development.¹

A binding constraint for agribusiness investment in ARMM is prevalence of *conflict* and the associated problem of *insecure property rights*. In particular, security of land tenure is a key obstacle for establishing commercial and export-oriented farms in the region. The continuing Moro insurgency, clan rivalries, as well as the operations of armed bands with diverse and overlapping objectives (ranging from political intimidation to extortion and banditry) make it easy to treat ARMM as a hopeless case, with no further progress possible without comprehensive reduction of conflict to levels comparable to the rest of Mindanao.

However, this way of thinking unwittingly reinforces the vicious cycle of under-development, as the seeds of conflict are planted in the soil of economic discontent. While *peace for development* is a widely accepted strategy, *development for peace* is a less obvious but no less valid flipside. This is demonstrated by successful cases of agribusiness investment in conflict areas of Muslim Mindanao.

The research questions for this study are: How did these businesses overcome problems of tenure security in the region? What are the appropriate business strategies for overcoming tenure insecurity in agribusiness investments? What are the prospects for widely replicating these and similar arrangements in conflict-prone areas of Mindanao? The answers would be found through a synthesis of the available literature, combined with findings from a field investigation, informed by an economic analysis of land rights and investment.

The rest of this paper is divided as follows: Section 2 provides a brief background on the investment climate in ARMM. Section 3 develops a conceptual framework, key hypotheses, and the method of investigation. Section 4 presents case studies and other findings based on a review of the literature and field investigation to identify business strategies and models. Section 5 discusses replicability of these models and implications for an investment strategy to address tenure problems in Muslim Mindanao.

2. BACKGROUND: INVESTMENT CLIMATE IN ARMM

2.1. Advantages of ARMM as an investment destination

The key economic advantages of ARMM as an agribusiness investment destination boil down to availability of resources at lower cost than in other comparable regions. First is *land*. In 2002, ARMM had a total of 518,448 hectares of farmland, equivalent to 5.6% of the country's area. The region accounts for about 6% of land planted with permanent crops. Table 1 lists, for the major cash crops, the share of ARMM in area harvested. Major crops are those with an area at least 20,000 hectares nationwide (actual area in 2010 is indicated), and are permanent crops except for sugarcane. Also shown are the area shares of the top two regions (excluding ARMM). Note that ARMM is a major national producer of *lanzones*, with the largest area share after CALABARZON, as well as coffee. It is also doing well in abaca, saba, rubber, and Cavendish banana, although considering the fact that Mindanao is a favored location for rubber and Cavendish, it should probably be devoting more areas for these crops. ARMM is not an important source of the other major crops.

On the positive side, low investment in cash crops in ARMM suggests considerable room for expansion, especially with a relatively large area devoted to temporary crops (283,000 ha in 2002). In 2010, 252,821 hectares were devoted to white corn and 158,144 hectares for rainfed rice. Nationally, the ratio of irrigated to rainfed rice area exceeded 2:1; in ARMM the ratio was 0.3:1. While some may argue for expanding irrigated areas in ARMM, a great bulk of the marginal lands for white corn and rainfed rice production should be seriously considered for conversion to higher income land uses such as cash crop production.

Table 1: Shares of selected regions in area harvested of major cash crops, 1991 – 2010 (%)

| Crop | Top regions + ARMM | 1991 | 1995 | 2000 | 2005 | 2010 |
|--------------------|--------------------|------|------|------|------|------|
| Abaca (41,748) | Bicol Region | 51.3 | 40.3 | 38.9 | 31.5 | 30.9 |
| | Eastern Visayas | 19.8 | 28.5 | 26.7 | 33.1 | 30.1 |
| | ARMM | 10.4 | 8.8 | 9.1 | 5.8 | 5.9 |
| Cashew (28,114) | Central Luzon | 7.9 | 7.4 | 6.4 | 5.9 | 5.5 |
| | MIMAROPA | 84.2 | 85.0 | 87.0 | 88.1 | 89.6 |
| | ARMM | .. | .. | 0.0 | 0.0 | 0.0 |
| Coffee | Northern Mindanao | 14.1 | 12.0 | 10.9 | 10.3 | 9.6 |

| | | | | | | |
|------------------|---------------------|------|------|------|------|------|
| (121,399) | Davao Region | 26.2 | 25.3 | 23.3 | 22.2 | 21.3 |
| | ARMM | 9.0 | 9.7 | 10.1 | 10.6 | 11.3 |
| Oil Palm | SOCCSKSARGEN | .. | .. | .. | 29.6 | 32.4 |
| (45,044) | CARAGA | .. | .. | .. | 58.9 | 37.1 |
| | ARMM | .. | .. | .. | 0.9 | 1.8 |
| Rubber | ZAMBOANGA Peninsula | 40.2 | 36.3 | 39.8 | 41.6 | 46.9 |
| (138,710) | SOCCSKSARGEN | 23.4 | 25.6 | 29.5 | 28.4 | 23.0 |
| | ARMM | 14.6 | 14.5 | 9.5 | 9.9 | 15.9 |
| Sugarcane | Western Visayas | 61.0 | 58.2 | 52.1 | 50.7 | 48.0 |
| (354,878) | Northern Mindanao | 5.2 | 7.7 | 8.6 | 14.2 | 15.6 |
| | ARMM | .. | .. | 0.0 | 0.3 | 0.3 |
| Tobacco | Ilocos Region | 67.7 | 61.8 | 66.8 | 63.3 | 67.4 |
| (29,707) | Central Luzon | 12.5 | 1.4 | 2.2 | 3.1 | 0.3 |
| | ARMM | 3.1 | 0.9 | 0.5 | 0.3 | 0.1 |
| Banana Cavendish | Davao Region | .. | .. | .. | 72.4 | 60.5 |
| (79,642) | SOCCSKSARGEN | .. | .. | .. | 12.1 | 11.6 |
| | ARMM | .. | .. | .. | 8.0 | 5.5 |
| Banana Saba | Western Visayas | .. | .. | .. | 10.2 | 10.1 |
| (145,800) | Davao Region | .. | .. | .. | 10.8 | 11.8 |
| | ARMM | .. | .. | .. | 7.7 | 7.9 |
| Calamansi | MIMAROPA | 48.5 | 44.1 | 40.7 | 39.3 | 38.0 |
| (20,982) | Davao Region | 3.6 | 5.4 | 8.3 | 9.6 | 9.5 |
| | ARMM | 0.8 | 0.7 | 0.8 | 0.7 | 0.7 |
| Lanzones | CALABARZON | 42.6 | 39.0 | 26.8 | 23.7 | 21.1 |
| (20,505) | Northern Mindanao | 5.6 | 5.9 | 13.1 | 13.2 | 16.3 |
| | ARMM | 35.3 | 36.2 | 32.9 | 29.3 | 26.5 |

Note: Figures in parenthesis denote area harvested in ha for the country in 2010.

Source of basic data: BAS.

The second advantage of ARMM is labor. ARMM wages are lowest in the country according to data from DOLE (Table 2). The difference from Davao Region is 20% for nominal wages (17% in 2000 prices).² As explained by Bacani (2007):

Since the ARMM is the most underdeveloped region in the country with low cost of living and high unemployment, it is but natural to expect that mandated minimum wages in the ARMM would be

much lower than those prevailing in Davao. This cost advantage was true ten (10) years ago, is still true today and we expect this wage differential to continue.

Opportunities for expansion of farms in these cash crops are auspicious in the wake of the current commodity price boom (Figure 1). Among the industrial crops, historic runs have been observed for industrial rubber and coconut, with gains for abaca and palm oil also impressive. On the other hand, price growth has been less pronounced for food crops.

Table 2: Nominal and real wages in agriculture, by region, in pesos per day, August 2011

| | PLANTATION | | NON-PLANTATION | |
|--------|------------|------|----------------|------|
| | NOMINAL | REAL | NOMINAL | REAL |
| NCR | 389 | 229 | 389 | 229 |
| CAR | 254 | 146 | 254 | 146 |
| I | 228 | 133 | 200 | 116 |
| II | 233 | 136 | 233 | 136 |
| III | 300 | 174 | 284 | 165 |
| IV-A | 312 | 181 | 292 | 170 |
| IV-B | 219 | 130 | 199 | 118 |
| V | 225 | 130 | 205 | 118 |
| VI | 245 | 141 | 235 | 135 |
| VII | 267 | 149 | 267 | 149 |
| VIII | 229 | 130 | 209 | 118 |
| IX | 230 | 130 | 210 | 118 |
| X | 274 | 147 | 274 | 147 |
| XI | 276 | 150 | 276 | 150 |
| XII | 240 | 136 | 235 | 133 |
| CARAGA | 233 | 124 | 213 | 114 |
| ARMM | 222 | 110 | 222 | 110 |

Note: Real wages are nominal wages deflated by CPI at base year 2000.

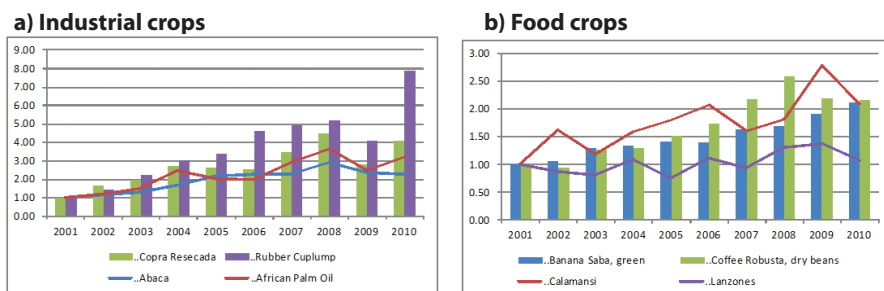
Source: DOLE.

2.2. Disadvantages of ARMM as an investment destination

There are a number of constraints more closely associated with the level of underdevelopment in ARMM and are common to other impoverished regions (such as Caraga). According to interviews reported in Wallace (2003), these include:

- *Weaknesses of the ARMM business sector* – There is considerable room for improvement with respect to ARMM business capacities and practices, in finance, accounting, marketing, coordination of output quantity and quality, and so on.

Figure 1: Price index for selected crops, 2001 – 2010 (2001 = 1.00)



Source: BAS

- *Inadequate infrastructure* – The provinces of ARMM are severely constrained by the lack of larger and more efficient ports, inadequate water and power supply, and the absence of post-harvest facilities. Infrastructure constraints are particularly acute for the island provinces.
- *Limited access to formal credit* – flow of credit to SMEs is choked by the lack of collateral, in turn due to lack of title. Banks may refuse to accept titled properties as collateral if there are security issues in gaining possession. The most acceptable properties are prime commercial lands, typically urban-based.
- *Low education* – ARMM has the ignominious distinction of having the worst educational attainments and outcomes in the country, which implies a scarcity of skilled labor, even low-skilled labor, with minimal basic proficiencies such as literacy and numeracy.

Among these, however, Wallace (2003) identifies the primary obstacle being **insecurity** or **lack of peace and order**. For agribusiness investment, an important aspect of the peace and order problem is the **unstable and uncertain nature of land tenure**.

2.3. Agriculture and land tenure in ARMM

In modern economies, land tenure is normally enforced by a formal system, with ownership documented by a title. Based on DENR records, the formal tenure system is performing well in ARMM (Table 3). The percent of parcels that are titled is 10 percentage points higher than the national figure; the percent documented by tax declaration approaches 100%, compared to 89% nationally and 85% in Mindanao. However, these figures omit the true scale of the enforcement and effectiveness problems associated with formal documentation (discussed in detail in Section 3).

Table 3: Land parcel documentation in ARMM, Mindanao, and the Philippines, 2004

| | Total parcels | Percent titled parcels | Percent tax parcels |
|-------------|---------------|------------------------|---------------------|
| ARMM | 527,440 | 64 | 94 |
| Mindanao | 4,503,520 | 50 | 85 |
| Philippines | 24,200,575 | 54 | 89 |

Source: Kadtuntaya Foundation et al (2009).

Land tenure in agricultural lands must be understood in the context of the Comprehensive Agrarian Reform Program (CARP). The scope of CARP in ARMM is about 0.34 million hectares, distributed across the five ARMM provinces (the largest is Lanao del Sur, followed by Maguindanao). This figure is far below the aggregate farm size for temporary and permanent crops according to the Census of Agriculture (about 0.52 million hectares). This suggests a large number of exclusions at the scoping stage.

Table 4: Scope and accomplishment of CARP in ARMM, as of 2011

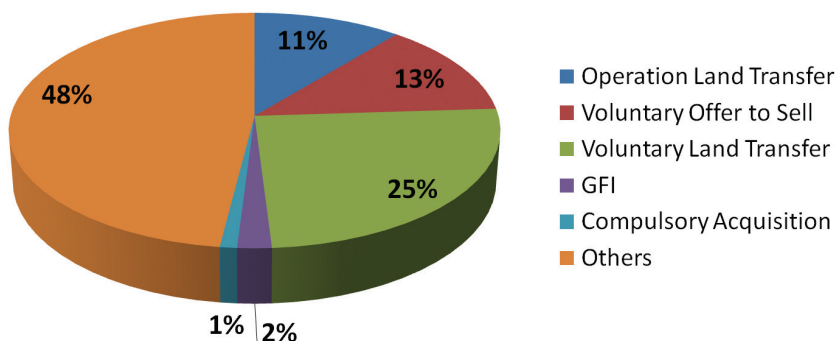
| | Scope (ha) | Accomplishment (percent of scope) | Balance (percent of scope) | Number of ARBs benefited |
|---------------|----------------|-----------------------------------|----------------------------|--------------------------|
| Basilan | 36,288 | 69 | 31 | 7,904 |
| Lanao del Sur | 163,964 | 80 | 20 | 44,407 |
| Maguindanao | 95,115 | 58 | 42 | 20,303 |
| Sulu | 17,387 | 42 | 58 | 2,430 |
| Tawi-Tawi | 28,499 | 67 | 33 | 7,873 |
| TOTAL | 341,253 | 70 | 30 | 82,917 |

Source: ARMM – DAR.

Furthermore, bulk of the accomplishment under private agricultural lands is in the form of VLT and VOS, whereas compulsory acquisition holds for only 1% of lands (Figure 2). Borras (2005) argues based on DAR audit reports that VLT is effectively a form of land reform evasion; VOS often turns into an opportunity to exact revenue from the state. Guitterez and Borras (2004) document that evasion and state plunder via VLT and VOS are rampant and severe in ARMM.

The investment constraints and risks in ARMM sound truly forbidding. In theory, investors weigh the constraints and insecurity risk against potential gains when making their business decisions. As our case studies demonstrate, some investors have estimated potential gains as outweighing risks, and have established profitable and stable agribusinesses in ARMM. A few instances for which case studies are available are reviewed below: these cover BJ Coco Oil Mill, Paglas Corporation, and Aztropex. The first two would be encountered again in the field investigation conducted under this study.

Figure 2: Land acquisition and distribution by mode of acquisition



Source: ARMM – DAR.

2.4. Review of previous case studies

BJ Coco Oil Mill. The company was established in Sulu in 1996 under the ownership of Benjamin Loong. It produced crude coconut oil and copra meat, with raw materials obtained from farmers in Sulu, Basilan, and Tawi-Tawi. The major buyer was San Miguel Corp.. It was also a recipient of regional government support, receiving a 10-year tax holiday (instead of the usual four), and was permitted duty-free importation of a generator set under AFMA. The Loongs were a prominent political clan with their own security force. They also had investments in coffee in Sulu (Wallace, 2003). BJ Coco oil mill is an example of investment by the local elite. Typically these would be oriented to the domestic market, where the technical expertise and marketing network of an outside investor is unnecessary.

La Frutera – Pagcorp. La Frutera is an export-oriented banana plantation, perhaps the most lauded agribusiness model in ARMM (Tuminez, 2009). The joint venture is formalized by a Farm Management Agreement between Paglas Corp. (Pagcorp), a family corporation that owns/controls the plantation land of about 1,200 ha and La Frutera Inc., the plantation developer and manager. La Frutera was set up by Ultrex Management and Investments Corporation, and Unifrutti, a Middle East based company, which handled the marketing side. The Paglas Corp, was established in 1997 under its President and chief executive officer Toto Paglas, a former mayor of the Datu Paglas municipality. The plantation now employs over 2,000 workers, of whom 90% are Muslims. Exports primarily reach Saudi Arabia and Japan and can exceed 70 million dollars annually.³

Toto Paglas was by all accounts an extraordinary and visionary leader, an established local chieftain who ended his political career to establish a thriving and profitable business that promoted rapid development on a municipal scale. In his own words, he attributed the Datu Paglas story to *leadership*:

It started with the realization that the life of my people must change for the better. But then, that change must also start with myself, the leader. Then, private investments, which I know was the sustainable way to economic development, must come in. Then, for investments to come in, I must have a “business plan.”⁴

He sought outside investors to realize his vision. At the time, Ultrex and Unifrutti were seeking to expand their banana plantations in Mindanao. The Unifrutti representative, John Perrine, remained skeptical. In a public business forum in 2004, Perrine noted the following:

... many investments were often preceded by “feasibility studies.” As a potential investor, he listened to presentations of such studies all the time. They normally addressed financials, market size and potential, and resources needed to make the project feasible. But, talking about the Paglas case, Perrine underlined that it was not financial figures, markets or resources that made an investment work. It was the people. And, in the Paglas case, it was Toto and his colleagues who made the investment work. It took courage for Perrine to make the investment in Paglas. After he shook hands with Toto, numerous local businessmen in Mindanao told Perrine’s foreign investors that the whole enterprise would fail, that conflict in the Muslim areas would consume any investment that they put in, and that their efforts would be in vain.

Those warnings turned out to be exaggerated. The guarantee of security from Toto was enforced in part by his clan’s dominance in the municipality, as well as his personal relationship with the MILF commander Hashim Salamat (his uncle). Toto would also recruit MILF returnees and sympathizers as plantation workers. He negotiated with the military a tacit “no fire” zone in his plantation. For his business plan to succeed, he needed not only to “play the game” – of which he was already a skilled practitioner – but had to serve as a game-changer. This included expanding participation in decision-making (rather than reliance on Datus); and promoting inclusiveness (government, military, religious leaders, workers, rebels, and even lawless elements). The traditional blood feud would need to be set aside in favor of the legal justice system, and ultimately, divine justice.

The plantation managers also needed to promote cross-cultural sensitivity and trust within the organization, as well as inculcate modern work practices and values among the employees, including the hardened warriors. Cultural sensitivity and community development were not only a matter of “corporate social responsibility”, but were keys to maintaining predictability and security in the business. In Bacani’s words (Bacani, 2007):

Our initial and continuing challenge is how to integrate our business with the community’s cultural system. We are fully aware of the

differences and we respect them. The similarities, however, are much more than the differences and we emphasize them. As Datu Toto Paglas is the recognized leader in the community, he is briefed on our plans and programs affecting people, like the introduction of piece work rates, quality incentives, cost savings incentives and personnel code of conduct.

In a way, we can say that Datu Toto Paglas, who is a member of our Excom, has deputized us regarding the reward and punishment system. When necessary, we ask for his help in implementing necessary disciplinary action on errant employees.

La Frutera also expects its share of problems relating to labor. That is why, from the beginning and up to the present, we have continuing training seminars on value systems and capability-building. The regular labor mancom meeting addresses labor issues as they surface to avoid protracted resolution. In handling disputes, we give due regard to the opinions of community elders.

Lastly, La Frutera counted on support from national and regional (autonomous) government. The company also received generous incentives from the Regional Board of Investments, enjoying a ten-year income tax holiday. The ARMM Legislative Assembly was also instrumental in lifting the banana hectareage limit, in place nationwide at the time.

The company's success seems to come from a unique confluence of events and even happenstance. A large foreign investor was searching for expansion opportunities, and happened to be convinced by one of the local *datus*, who happened to exhibit outstanding leadership, contacts ranging from local politics, the armed forces, and the President of the Philippines himself.⁵ Despite these, we believe that some aspects of the Paglas experience can be replicated to the benefit of communities throughout Muslim Mindanao.

Aztropex. This company is a Filipino subsidiary of a Saudi company, which entered a joint venture with FEAIICO (Far Eastern Agricultural Investment Company), a Saudi-owned consortium. *Astropex* consolidated Moro-owned land in various regions, including ARMM, by negotiating with the heads of clans. Each head represented about 300 hectares, which were achieved by consolidating family parcels of about five to 10 hectares per family. Part of the arrangement was to hire "some" of the owners and pay them regular wage.

MILF members were hired to work in the plantation. The MILF leader gave support in writing for the investment, under the rationale of economic development and peace. The fact that the outside investor was a Muslim brother (and based in an Islamic country) was an additional justification for MILF support. The KSA also used religious and ethnic identity to convey the development- and peace-oriented goals of the investment (Salerno, 2011).

3. FRAMEWORK AND METHOD OF STUDY

3.1. Nature of property rights

Land tenure pertains to the set of rights associated with landholding and ownership. Rules of tenure determine how property rights are assigned (Box 1). The essential elements of property rights are: *identity* - owners of the property as well as property boundaries are well defined; *exclusivity* - the owners exert control over access to the property and the benefits from its use; and *transferability* - the owner is free to open access to other persons, or transfer the property right altogether, at freely chosen terms and conditions. Conventionally a formal system governs the administration of land rights. The most common system is the Torrens title, adopted in the Philippines, wherein claims to land are conferred property rights upon listing in a land registry.⁶

Box 1: Definition of land tenure

Land tenure is the relationship, whether legally or customarily defined, among people, as individuals or groups, with respect to land. (For convenience, “land” is used here to include other natural resources such as water and trees.) Land tenure is an institution, i.e., rules invented by societies to regulate behaviour. Rules of tenure define how property rights to land are to be allocated within societies. They define how access is granted to rights to use, control, and transfer land, as well as associated responsibilities and restraints. In simple terms, land tenure systems determine who can use what resources for how long, and under what conditions.

Source: FAO (2002).

However, formal property system is effective only insofar as it acquires *legitimacy*, which pertains to informal assent to property rights. De Soto (2000) argues that Western formal systems have undergone centuries of struggle and evolution to win widespread acceptance of legal forms and governance mechanisms. Prior to the evolution of formal systems, property rights were enforced entirely on an informal basis, as in customary tenure systems.

3.2. Evolution of land rights in ARMM

Kadtuntaya Foundation et al (2009) documented that traditionally, land rights in Muslim Mindanao were based on *adat* or customary law. This law recognized the Sultan’s land, which may be granted or leased; and communal land for which usufruct rights may be allocated to tribal members. Owing to the belief that resources are owned by God, property rights are not absolute but rather convey stewardship over land. The stewards are

expected to make the land productive, benefit the common good, and provide support for the neediest (*zakat*).

The Spanish colonial period introduced instead the “Regalian doctrine” in which Spain claimed state ownership over all lands in the colony. The doctrine was imposed in most of Luzon and Visayas but not in Moro-controlled areas. After the Treaty of Paris, Spain transferred their claim of sovereignty to the American government, which then by bloody conquest, imposed its colonial rule over both Christian and Moro populations.

Under the American colonial period, the Land Registration Act of 1902 was introduced, imposing the Torrens system on all private and public lands. The Public Land Act of 1903 provided for the automatic classification of all unregistered lands as public lands under ownership of the state, while Act 718 of 1903 nullifies all the grant of titles made by non-Christian chieftains, *datus*, and sultans. Owing to rampant illiteracy, ignorance or downright rejection of the law, as well as incompatibility of communal ownership with the Torrens system, legal recognition of property rights of Moros and *lumads* over lands occupied and/or claimed was withheld. Jubair (1999) cites the Cadastral Act of 1907 as an added tool for acquisition, as it favored educated natives, moneyed bureaucrats, and American speculators who were more familiar with bureaucratic procedures and not above resorting to fraudulent surveys.

The colonial government also actively attempted to open up Moro and *lumad* lands to Christian settlers and corporations. Act 441 of 1939 created the National Land Settlement Administration to facilitate acquisition, settlement, and cultivation of lands acquired either from government or private properties. The newly independent Philippine Republic was to continue these land policies, which accelerated the opening up of Mindanao to settlements. Guitterez and Borrás (2004) identifies several types of settlement:

- State-sponsored settlement;
- Voluntary settlement by the rural poor – various landless poor, whether Christian settlers, displaced Muslims and *Lumads*, would independently occupy “public” land for subsistence farming;
- Enterprising members of the middle class and bureaucrats – educated persons with a middle class background, whether Christian or Muslim, would take advantage of the legal framework and secure full ownership by cultivating land, either directly or by hiring poor cultivators to work as tenants;
- Elite and multinational companies – elite and big business interests would play a key role in displacing Muslims and *lumads*, to acquire lands for plantations and logging concessions.

Migration and settlement of vast areas of Mindanao exacerbated land conflicts between settlers and Muslims and indigenous peoples. Land-related strife and political grievances precipitated the Bangsamoro insurgency, officially launched in 1973. While civil war has cast a long shadow over Muslim Mindanao, insurgency is but one of the various elements of conflict in the region.

3.3. Conflict and authority structure in Muslim Mindanao

Kreuzer (2005) notes that a new elite has emerged, displacing the traditional *datus* (a traditional title based on royal lineage), wresting power by their ability to navigate the novel configurations of electoral politics and local violence. In fact “the civil war represents an enabling structure which allowed opportunistic actors to use “legitimate violence” to satisfy their own interests. Good contacts with the guerrillas or the military and the authority to use the services of the large numbers of CAFGUs or police units serve as an additional resource for the promotion of the interests of the clans.” Violent conflict between clans is often systematically conducted in terms of *rido*, characterized by retaliatory actions between families or kin groups (Box 2).

The clan is headed by a local strongman (often self-styled as a *datu* regardless of bloodline). *Datuism* as an authority structure is hardly unique. Sidel has written extensively on Philippine political and economic life under the lens of “bossism”, which denotes “prevalence of local power brokers who achieve sustained monopolistic control over both coercive and economic resources within given territorial jurisdictions or bailiwicks” (Sidel 1997, page 952). He traces the rise of bosses to the practice of democracy under pre-war colonial rule, under which American officials were already complaining that, in a “large majority of cases”, the municipal police would serve as henchmen of local politicians. This facilitated the post-war emergence of the small-town boss, and upwards in the hierarchy, the provincial warlord, and ultimately an authoritarian president.

Sidel (2004) advances the following theses:

- i) Local bosses succeed when they seize opportunities for monopolistic control over illegal activities, nodal transport or commercial chokepoints, as well as regulated crops and industries. Control is imposed by appropriating the relevant state apparatus.
- ii) Where economic power is derived from state-based sanction, bosses must rely on super-ordinate power brokers. Withdrawal of support from these brokers may spell their downfall.
- iii) Where economic power results from a solid base of proprietary wealth outside state intervention, bosses perpetuate their clan in power through dynastic succession.

These theses contradict some past notions, such as: landholdings as a base of political power; and bossism as an obstacle to economic progress. Sidel argues that landholdings are typically accumulated *after* the political ascendance of the boss. Furthermore under, bosses are not necessarily obstacles to economic progress, but may serve as “handmaidens to economic growth”. Even in modern urban or peri-urban settings in Cavite and Cebu, bosses are able to serve as gatekeepers and facilitators for outside investment through their control over zoning, construction contracts, business regulation, and the local police (Sidel, 1997).

The problem of conflict and prevalence of bossism is not unique to Muslim Mindanao, although the degree is perhaps more intense there than in the rest of the country, with a few exceptions, e.g. Abra (Paredes, 2010). The intensity is highlighted by the dominance of warlords in command of private armies. It is also exemplified by the activity of armed groups or “entrepreneurs in violence”, who operate under tacit support of the political clans, offering protection of properties and persons from other armed groups or even government forces (Guitterez and Borrás, 2004). Within this context, the current land tenure system in ARMM have the following important features:

1. The formal title is a weak basis for property rights and contracts. It is the dominant clans headed by a datu that enforce land rights.

Box 2: Rido

The coordinated studies on rido documented a total of 1,266 rido cases that occurred between 1930s to 2005, killing over 5,500 people and displacing thousands. Out of the total number of rido cases documented, 64 percent remain unresolved. The top four provinces with the highest number of rido incidences are: Lanao del Sur (377), Maguindanao (218), Lanao del Norte (164), and Sulu (145). The rido incidences in these four provinces account for 71% of the total cases documented. The findings also show a steady rise in rido conflicts in the 11 provinces surveyed from the 1980s to 2004. Fifty percent (637 cases) of the total rido incidences recorded by the studies occurred in the last five years (2000-2004), which is about 127 new cases per year... [L]and disputes and political rivalries are the most common causes of rido.

Source: Torres (2007)

According to Mansayangan et al (2011), throughout ARMM the formal system is seen as alien institutional arrangement imposed from the outside. This principle holds even for the agrarian reform program, a modern redistribution scheme based on formal title. However, one should not dismiss formal titles as worthless; in many cases, the formal title coincides with customary tenure, typically established by possession. This implies that land tenure in conflict-prone areas overlays modern practices and institutions. This reflects the status of the clans themselves, “who enjoy both the authority of traditions (agama and customary law) and the state laws, because they are the ‘elected’ local officials in their own domain” (Mercado 2011, p. 20). Clearly, any business arrangement involving land within the bailiwick of a clan would require blessing of the local *datu*. While the *datu* acts as “gatekeeper” for gaining access to land, he also provides a service by securing boundaries and property rights within his territory.

II. Progressive elements among the dominant clans are open to joint commercial opportunities that would enhance their wealth and standing in the community.

Certainly, there are local kingpins bent only on extortion or even outright plunder of businesses within their jurisdiction. However, as Sidel has argued, there are progressive bosses who facilitate investments, so long as it builds up their own political and economic base. For example, the investor would be required by the boss to hire rank-and-file employees locally, which reinforces loyalty of the community to the boss. The more progressive bosses combine both development concerns for the communities, and commercial interests of his clan, and would function as an ally for outside investors.

III. Clan rivalry and vagaries of local and national politics may disrupt control exercised by the datu and impact adversely on his business arrangements. Nevertheless, clans with a history of dynastic succession within their respective bailiwicks are more likely to maintain their long-term dominance. In particular, clans provide continuity over any long-term arrangements negotiated by a clan leader.

Challenges remain even when investors seek facilitation from the local *datu*. Ferrer (2010) underscores the dynamic nature of “warlordism” in ARMM, characterized by clan rivalry, rampant violence and intimidation (peaking at elections), and frequent turnover. The rise of the Ampatuan clan, culminating in the Maguindanao massacre of 2009 and the rapid dissolution of Ampatuan power base, is an extreme example of these dynamics. Given this instability, the investor is rightly cautious of depending on a specific *datu* in making a long-term commitment to an area.

Mercado (2010) describes the power configurations in Maguindanao as follows: the Ampatuans traditionally control the municipalities of Aguak, Unsay, Mamasapano, and Hofer; the Mangudadatus over Buluan, Lutayan (Sultan Kudarat), and Palembang (Sultan Kudarat). Other prominent clans are Sinsuats in the former Dinaig, the Matalams in the former Pagalungan, the Midtimbangs in the former Talayan, the Masturas in the former Nuling, and the Tomawis-Aratuc families in the Iranon towns of Barira and Buldon. Within their bailiwicks, their traditional dominance is fairly secure. Unfortunately the Ampatuans claimed ascendancy over the other clans under the patronage of the national government, personally carrying the favor of former President Arroyo. Such ascendancy was entirely based on appropriation of the state apparatus, i.e. the local government budget, the local police, and militias, together with control over illegal activity. As Sidel (2004) warns, such control is prone to turnover when the national state withdraws support, as eventually transpired for the Ampatuans in 2009-2010.

Clan leaders who maintain control can assure stability in any business transaction. However, when they are unable to exert personal supervision – e.g., due to departure (for another government position), incapacity, or death – the dynastic and collective feature of the clan should be able to continue. Normally, the successor or surrogate respects any arrangements made by the original leader. In rare cases, there may be internecine rivalry over succession, but normally there is a smooth transition.

3.4. Method of field investigation

This study relies on a combination of desk reviews and field investigations. The field investigation would cover *business facilitators*, i.e. government agencies and officials engaged in agribusiness investment promotion in ARMM; and *farmer groups* based in ARMM, covering both island and mainland provinces and crops. Interviews used probing, open-ended questions pertaining to issues of land rights, security of tenure, and implications for agribusiness investment.

To date the study has conducted focus group discussions (FGDs) and interviews in Cotabato City (ARMM regional government), Tacurong City (Maguindanao municipalities), Patikul, Sulu, and Lamitan, Basilan. The FGDs and interviews covered the following:

- i) ARMM Regional Government:
 - a. Business Council officers
 - b. DAR officials
 - c. BOI Technical Staff
 - d. DAF Field Operations Director
- ii) Mayors of Southern Ligwasan Alliance of Municipalities (SLAM)
- iii) Sulu:
 - a. Provincial Agricultural Officer (PAO)
 - b. Provincial Agrarian Reform Officer (PARO)
 - c. DTI Provincial Director
 - d. Caretaker and farmer-suppliers of BJ Coco Oil Mill
- iv) Basilan:
 - a. PAO
 - b. DAR Provincial Office Staff
 - c. DTI Provincial Office staff
 - d. Cooperative officers of SCARBIDC (Sta Clara Agrarian Reform Beneficiaries Integrated Development Cooperative)

Farmer groups interviewed so far cover the island provinces. Only one group remains to be interviewed, which is a farmer's group in a resettlement area located in Upi, Maguindanao, to represent farmers in the mainland provinces.

4. RESULTS OF FIELD INVESTIGATION

4.1. Remaining issues in human security

Based on Sections 2 and 3, human security is a major constraint to investment. Threats to human security occur throughout ARMM, but these tend to be isolated incidents. Unfortunately, such incidents tend to be widely reported, hence, the perception of a breakdown in law and order.

In some cases, however, incidents were sufficiently widespread as to disrupt normal agricultural activity and investment. In Sulu, despite improving peace and order in 2010, farmers needed to evacuate their farms and residences frequently to avoid being caught in the crossfire of “military operations” against lawless elements (mainly the Abu Sayyaf Group or ASG). They were unable to protect crops and farm assets against encroachers or pests (such as wild pigs). Investment in draft animals and tree crops suffered. Substantial portions of their farm parcels were left uncultivated owing to lack of plows and carabaos.

Interestingly, Sulu is renowned for abundant fruit harvests (*lanzones*, mangosteen, durian, etc.), which farmers and residents attribute to old trees or natural seed dispersal (rather than intentional planting decision), combined with very high soil fertility. Under circumstances of rampant conflict, there is little basis for guaranteeing human security and land tenure.

4.2. Characterizing land tenure in ARMM

The field investigation confirms that formal title is but one element of assuring tenure and property rights. The overriding consideration is well-established possession, effectively a form of customary tenure. Possession may not be well documented by formal title. For instance, in Sulu, many properties are untitled, or under a mother title that does not reflect subdivision by inheritance. Similarly in Basilan, outside the plantation lands (Menzi, JAKA, Sime Darby, etc.), formal title (if any) is largely through free or homestead patent. Currently all patents are undergoing verification by an interagency committee composed of the DENR, DAR, Land Registration Authority (LRA), and Bangko Sentral ng Pilipinas (BSP) to purge land titles of discrepancies, overlaps, and other documentation problems.

In other cases, the formal title may mask true tenure relations. For some parcels, the immediate cultivator maintains possession, but may defer to ownership or ownership-like claims asserted by a *datu* or clan leader. While this is true throughout ARMM, the tendency may be stronger for the mainland provinces, namely Lanao del Sur and Maguindanao, where economic and political power has often been associated with consolidation of landholdings. An indicative listing for a few clans in Maguindanao is provided in Table 5.

It is not clear though what is the extent of control, formal or informal, exerted by the clan leaders. According to farmer interviews, tenancy relations in Maguindanao persist, although owner-cultivation is also common (see Section 4.3). In most cases, tenancy relation is between relatives, which attenuates the exploitative features of agrarian tenancy. For instance, in rice and corn areas the tenant is required to pay 20% of the harvest as rent; in coconut areas there may not even be a sharing arrangement, but rather a piece rate payment for planting coconut trees, with laborers given harvest rights until the piece rate (about P350/tree) is fully paid by the landowner.

In case maximal interpretation of “landholding” prevail, then consolidation persists despite the agrarian reform program. This has probably occurred through various means discussed in Section 2.3. According to DAR and DA officials, it is possible that lapses in land reform implementation occur at the local level in connivance with some officials. Farmers are also

responsible, as they fail to assert their rights, particularly those who are less educated and illiterate. Government's responsibility is to provide better social preparation for ARBs.

Table 5: Indicative listing of clan landholdings in Maguindanao

| Clan | Area | Description of landholdings |
|---|--|---|
| Ampatuan | Ampatuan, Datu Piang, Unsay, Hofer, Datu Sangki, Datu Saudi-Ampatuan, Sharif Aguak | Covers thousands of ha. In Sharif Aguak consolidation through pressured land sale |
| Sinsuat | Odin Sinsuat | Also covers thousands of ha |
| Sema | Odin Sinsuat | About 500 ha |
| Paglas | Datu Paglas | Several hundred ha; consolidated under lease agreement by plantation |
| Candao | Sultan Mastura | About 50 ha |
| Others: Matalam (Pagulangan), Pendatun (Pendatun), Mastura (Sultan Mastura) | | |

Source: Key informant interview

In the island provinces, there is less tendency for prominent clans to consolidate large farm landholdings. Landholding inequality is therefore not as extreme as in the mainland provinces, although some modest accumulation of land was observed in a few political families such as Jainan (Indanan), and the Tans. Rather, investments are directed outside of agriculture, and even outside of BASULTA (e.g. Zamboanga City).

Average farm sizes in Sulu range from 3 to 7 hectares. These are mostly tenanted, based on 50:50 sharing of net income (for coconut lands). The landowners are usually the relatives. However these are also persons of modest means. Farmers do not rely on landowners for cash advances, but rather borrow from traders (occasionally even the landowners would resort to traders for their credit needs!)

4.3. Formal tenure and agrarian reform communities and/or resettlement areas

A special case of formal tenure is land held by agrarian reform communities (ARCs) and/or resettlement areas (Table 6). Given that land redistribution is premised on proper land documentation and the formation of ARCs on installation of a critical mass of beneficiaries, these lands showcase the exercise of *de facto* and *de jure* property rights by smallholders in ARMM. DAR officials attest to the availability of these resettlement areas for large-scale operations of any interested agribusiness investor. While lands have been titled to ARBs, large portions remain uncultivated owing to inaccessibility or lack of capital. DAR officials coordinate with all concerned parties (see below) to facilitate investments in these ARCs.

Table 6: Selected resettlement areas in ARMM

| Province | Area | Approximate size |
|---------------|--|------------------------|
| Maguindanao | Resettlement I and II (Barira, Buldon, Matanog) Resettlement III (Labungan) | > 2,000 ha 4,000 ha |
| Basilan | Sumisip | 4,000 ha |
| Lanao del Sur | Capay | 3,000 ha |
| Sulu | Patikul | 1,000 ha |

Outside the resettlement areas, large ARCs are found in the former rubber and coconut plantations of Basilan. Expansion is patent in the case of rubber, propelled by historic run up in prices (Figure 1). About a third of rubber farms are farmed by cooperatives; the rest by smallholders. Despite the departure of previous plantation owners, rubber farm cooperatives have managed to find buyers for their product. They have also taken over operation of processors, which allow them to market semi-processed output (in bales) and move up in the value chain. DAR, DA, DTI, and LGUs have poured support for these cooperatives. Currently, funding is being secured for upgrading antiquated processing equipment.

4.4. Role of clans in agribusiness investment

The FGDs confirmed that any significant business venture in ARMM would require cooperation from the local dominant clan, represented by elected officials – typically the mayor, who is also likely to be the *datu*.⁷ The ARMM Business Council members agreed that formal title is subordinate to actual control exerted by clans, headed by a *datu*. Rather than undermining property rights, this assures property rights as the *datu* is in charge of protecting property of the clan and its allies.

The Mayor of Paglat discussed the formation of the Southern Liguasan Alliance of Municipalities (SLAM) in terms of doing away with *datu*-ism. However, in the course of the discussion with SLAM mayors, it became clear that they are only targeting the more objectionable features of *datu*-ism. The *datu* remains essential for maintaining harmony within Muslim society.

Incidence of violence is undeniable but in terms of daily life of the common people, Mindanao is generally peaceful – that is, if the local *datu* is performing his role as peacemaker (rather than trouble-maker). For instance, they recount a recent experience of ending a *rido* (violent family feud), involving some MILF combatants. They convened the disputing parties, arranged for arbitration with the *ulama* (Muslim elders), and reached a blood money settlement. Neither the MILF nor the military were involved at any stage of dispute resolution to avoid escalation of conflict, but the end-result was cleared with both military and insurgents. Finally, the mayor himself donated the blood money. He said this would make the settlement permanent (actual payment would often keep resentment alive on the side of the paying party), and he would earn a debt of gratitude from the disputing parties.

Likewise the well-known “Arms to Farms” program in Sulu, initiated by a former governor, was also effective in creating zones of peace. Covering about 12,000 hectares, the program aimed to encourage safe enclaves for normal farming to proceed uninterrupted. The LGU provided planting materials, inputs, and land preparation services. Instrumental in these special zones were the extensive negotiations with all major armed groups to guarantee peace, safety, and non-incursion in the designated areas.

On the economic front, the mayors were unanimous in their assurance of absolute security for any outside investor willing to invest in their jurisdictions (in a similar vein as the assurance from Toto Paglas to Unifrutti). Within the four municipalities, a total of 5,000 ha could be made available for plantation crops, e.g. oil palm, together with a mill based in Maguindanao. This would give healthy competition to the only other oil mill in the area (Agumil, in Sultan Kudarat). Consolidation of land would not be a problem, as the *datu* knows how to approach farmers and convince them to join the plantation venture both because of his stature in the community, as well as the farmer’s benefit in terms of income and employment.⁸

Our FGDs with smallholders confirmed the farmers’ readiness to engage in agribusiness ventures, plant new crops, and even lease their lands (where applicable). However, they insisted that the investor assumes all the risk, including provision of planting materials, land preparation and so forth. They also demanded to be hired as workers on their lands.

The ARMM Business Council mentioned in passing that there are a few cases in which business deals go awry owing to “local politics”. This suggests that the local strongman was unable to maintain his grip on power. On the other hand, Datu Paglas is an example in which the clan maintained continuity even after the most untimely demise of Toto Paglas in 2008. His brother, Mayor Mohammed Paglas, continues to exercise leadership over PagCorp., even moving towards expansion of plantation lands through lease agreements in the surrounding barangays.

The ARMM Business Council members pointed out that there are a number of progressive-minded mayors in ARMM, but some mayors have not had an opportunity to cooperate with investors. A demonstration effect, similar to what happened in Paglas, may encourage more local politicians to welcome agribusiness investors. Perhaps 10 out of the 26 municipalities in Maguindanao may be promising venues for investment, at least for now.

There are ways of detecting progressive-mindedness among electoral officials. The easiest is to obtain referrals from career professionals in ARMM agencies, such as BOI, DA, and DAR (for agrarian reform areas or settlements). Engagement and public investment (using the LGU budget) in development projects is another. According to the ARMM Business Council, in Basilan, the expansion of rubber plantations owes a lot to the support of the provincial government, under the late Governor Akbar, for a DA project providing seedlings, fertilizers, and technical assistance. Projects could also be in the area of human development, as evidenced by the health human resources project among the SLAM municipalities.

The key officials themselves may personally have the benefit of professional development and practice (the Paglat mayor was a long time engineer in Saudi Arabia), as well as current capacity building (seminars and trainings organized by civil society and/or donor organizations). Lastly, independent outside recognition is another reliable signal. The Galing Pook for instance has recently created an award category for outstanding ARMM municipalities.

Adequate measures should be in place to promote a more equitable sharing of benefits for smallholders. In the establishment phase, certainly entry of investments should be strongly incentivized. However the facilitator should be wary of very long-term contracts that “lock-in” smallholders, create impressions of gross unfairness, and are ultimately unsustainable. For instance, lease rates may be held ridiculously low even if a plantation is seen to generate extraordinarily high profit, creating resentment in the community. Small farmers or even LGU officials may not have the business experience to protect long term interests of smallholders, hence national government officials (DAR, DTI, and other relevant agencies) should continue to exercise an oversight function over these business deals.

5. CONCLUSION

5.1. Implications for agribusiness investment

We have generally confirmed the key hypothesis of the study. From these, it is straightforward, even commonsensical, to draw implications for an agribusiness investor in Muslim Mindanao. The interested agribusiness investor who has scoped ARMM as an investment destination may find an entry point through a business-oriented office in the regional ARMM, say the BOI, the DA, or the DAR. The ARMM Business Council is also a suitable entry point. The objective is to secure referral to a *datu* who is business-friendly and progressive-minded. Signs of being progressive-minded have been discussed previously, i.e. the LGU invests in human development, is supportive of local business, welcomes civil society engagement, and perhaps has won recognition from independent award-giving bodies.

On the other hand, one sign of an unsuitable ally is a reputation for extreme aggression (as opposed to defensive engagement of armed escorts, which is *de rigueur* in Muslim Mindanao). Another is excessive reliance on patronage of key persons in the national or regional government. Rather the *datu* should be well established and secure within his bailiwick.

In turn, the *datu* would serve as facilitator, particularly for the farmers who possess customary tenure over the land to be utilized, as well as secure clearance from armed groups within his territory (i.e. MILF, the military, and the militias). It is likely that interlocking clan-based business would have to also be part of the cooperation arrangement (i.e. as provider of land and other services, including labor contracting). Given the absence of a truly competitive business environment in the area, relying on the clan or its allies

for nontradable inputs would probably make good business sense as well. Throughout these negotiations, the “personal element” mentioned by Perrein and others is crucial in hammering out a mutually acceptable arrangement. This is no different from other business ventures outside of Muslim Mindanao, although the outside investor would need to adjust to the local context and culture.

5.2. Prospects for agribusiness expansion

The mediocre record of agribusiness investment in Muslim Mindanao suggests poor prospects for investment, with security of land tenure a major impediment. However, there are reasons to be optimistic about the outlook for agribusiness, conditional on overcoming two major constraints.

The first major constraint is *supply of progressive-minded local elected officials*. The *datu* should serve as “development entrepreneurs” (Faustino and Fabella, 2011) who identify clan interest broadly in terms of development outcomes of communities within their jurisdiction. This should not be seen as irreversible, as successful demonstrations may trigger virtuous replication cycles (as perhaps is already happening after the case of PagCorp). It is no use lamenting that there are too few such progressive-minded officials now, when those who are ready to welcome investors even now are hard-pressed to find an investment match.⁹

Which brings us to the second major constraint, the *lack of interest on the side of external capital to invest in ARMM*. As argued in this paper, security of tenure can be addressed by existing institutional arrangements in ARMM (albeit outside the formal land titling system). Therefore this should not be an obstacle towards increasing the level of interest among outside capitalists. ***We argue that coordinating business in the context of bossism is hardly unique to Muslim Mindanao. Any differences are in terms of degree but not in kind.*** Investors who have long developing-country experience are surely familiar with this style of doing business. In many cases, such institutions are transitioning or have transitioned towards more modern and less “personalistic” types of investment, over the course of economic development. The key is to look past these superficial differences and evaluate Muslim Mindanao within essentially the same evaluation framework of risk and return.¹⁰

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ENDNOTES

1 Data from the Philippine Statistical Yearbook 2010.

2 Interestingly this is not consistent with BAS data on agricultural wage rates. This appears to be one area in which agencies would need to coordinate their public data.

3 Company information from: <http://www.datupaglas.com/>.

4 Datu Ibrahim Paglas, speech delivered at the Preventive Action session, cosponsored with Council on Foreign Relations, 12 April 2005.

5 Toto Paglas recounts: "I remember now the former President Ramos, still an Army Major at the time, who, whenever he would visit my father, would play my hair and put me on his lap, he was like a father to me, he as President made gave special approval to allow banana plantation in my town." http://www.datupaglas.com/toto_hist.html

6 The popularity of the Torrens can be traced to its simplicity compared to alternative formal systems, such as a "chain title" which requires documentation of successive transfers from the original title held by the state (or the king).

7 One exception would be if the *datu* has already served three terms and is serving a nominally subordinate position such as vice-mayor; or is based with the national, ARMM, or provincial government, and has left a relative in charge of the area.

8 The author shall also, as an exercise, document in greater detail the availability of land for future investment, by clan and municipality, in at least one province of ARMM (including Maguindanao), based on key informant interviews.

9 The flipside is *demand* for progressive-minded governance on the side of the electorate. In the context of Muslim Mindanao however, *datu*-ism appears to be deeply entrenched and commands very popular legitimacy, hence it may not be realistic to expect this demand to be a significant factor in stimulating the supply of development entrepreneurs, at least in the medium term. To stretch the analogy: even the Arab spring had to wait two generations in some Arab states to gain traction!

10 Another issue is to incorporate customary tenure and control into the formal titling system, i.e. as exemplified in CADT for ancestral lands. In my view, there is not enough evidence to suggest that this is necessary. In fact some accommodation is already instituted in the Organic Act (Article on “Administration of Justice”), which vests jurisdiction on property issues on Sharia courts for Muslim lands, and tribal courts over IP lands.



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