

Land Administration and Agrarian Reform

Issues of land administration and its direct and indirect impacts are well documented, and the appropriate legislation has been drafted and is ready for adoption. What remains is the implementation of these reforms to realize the benefits - and that requires political will power, given its political sensitivity. On agrarian reform, the key constraints have been funding availability, as well as the lack of adequate incentives to encourage the sale of large tracts of land still under private ownership. To attain the objectives of agrarian reform, in particular the transfer of land tenure to beneficiaries, solutions to the financing issues will need to be developed and the process accelerated.

Background

Land is a fundamental asset for the rural and urban poor. It provides a foundation for economic activities and functioning of market institutions (for example, credit) and nonmarket institutions (such as local government and social networks). Secure property rights provide increased incentives, such as access to cheaper credit, which encourage households and individuals to invest in land. For most poor people, land is the primary means of generating a livelihood and it may also be the main vehicle for investing, accumulating wealth, and then transferring such wealth between generations. In rural areas, a significant amount of land remains in the hands of a small number of people and is farmed as haciendas, with large tracts that are still under sugarcane. Such inefficient and inequitable property rights and land markets are a core problem of the land subsector in the Philippines. They have, in turn, resulted in tenure insecurity and subsequent low investments in land, leading to secondary effects such as land degradation and poor agricultural production. Research has shown that secure property rights are an enabling factor in improving the investment climate, natural resources management, urban land management, and decentralization, as well as in promoting good governance.

The Government addresses issues of land equity, tenure security, property rights, and land markets through two main elements of a broader strategic framework—land administration and agrarian reform. These elements involve many agencies, from the Department of Finance for valuation and tax issues, to the Department of Agrarian Reform (DAR), for land issues in rural agricultural areas.

However, two agencies, the Department of Environment and Natural Resources (DENR) and DAR are the key implementing agencies.

DENR is responsible for land administration, where the objectives are to improve service delivery and reduce “red tape” and corruption in registration of land transactions. Improved service delivery, increased coverage of the land administration system, and standardized and consistent property valuation system are expected to increase land registration, which would in turn increase government revenues from land-related taxes and fees, thereby leading to improvement and sustainability of public services in general.

DAR is responsible for agrarian reform, in which the primary objective is to reduce land inequality, primarily in rural areas. With an estimated 41.4 percent of the population living in rural areas, and 64 percent of them involved in agriculture, the agrarian reform program is meant not only to improve tenure security, but constitutes a poverty reduction tool aimed at increasing farm revenues, and through the investments that come from land ownership, contribute to sustainable land use. The agrarian reform system was developed to improve access of the rural poor to land as well as function as a poverty reduction program.

This discussion brief concentrates on these two key thrusts—land administration and agrarian reform—as successful reforms in these areas would address the significant issues of land equity, tenure security, property rights, and land markets.

Land administration

Status of land administration

The land administration system in the Philippines is one of the most inefficient in the world. Consequences are multiple, fake, and bad titles. For example, approximately 100 parcels with duplicate titles were recently discovered in one *barangay* alone (Barangay Holy Spirit in Quezon City).¹ Furthermore, a recent global investment climate survey showed that the Philippines ranked second worst among 12 countries in terms of time taken to register land transactions².

Only 45 percent of land parcels have a title deed. The Land Registration Authority (LRA) under the Department of Justice has reported that there are 11 million title deeds registered in their offices. While the total number of parcels in the country is unknown, it is estimated that there could be as many as 25 million. While this compares favorably with the Lao People's Democratic Republic (20 percent titled), Cambodia (less than 10 percent titled), and Indonesia (around 25 percent titled), it is well below Thailand (around 80 percent titled) and Malaysia (around 90 percent titled). Most other East Asian countries are embarking on major titling programs, and by 2010 the Philippines could be ranked last in the region, if it does not initiate similar land-titling programs in the coming years.

Registration of land transactions can take from two weeks to a few months; in Thailand, the process is commonly completed in one day. Land titling can take from six months to several years, and can cost as much as \$2,000, compared with three months in Thailand and four months in Indonesia. The cost of registration of transactions is very high due to the high tax rate and the informal payments often needed to accelerate the registration process. This has often pushed transactions into the informal markets, depriving the Government of taxes.

There are several systems and methodologies for property valuation used in the country. These are utilized for different purposes, including real property taxation, compensation for land acquired for public investment, and valuation under the Comprehensive Agrarian Reform Program (CARP). The multiplicity of systems and methods has often produced doubtful and inconsistent valuations whose contestation in court has at times caused long delays in the implementation of government programs. Doubtful and contested land valuations have also had an adverse impact on the efficiency of land markets and land administration. Below-market valuation of land prevents the efficient allocation of lands to their best use, and leads to a relatively low tax burden, which encourages land speculation and undermines the generation of significant revenues from land ownership. The absence of national standards and methods of valuation, in accordance with international standards and practice, also results in a loophole that can be used to overvalue real property and underestimate the risk in property-related credits. This undermines the integrity of financial transactions and could reduce the stability of the financial system.

Government efforts

Recent governments, starting from the Ramos administration (1992–1998), have recognized the inefficiency of the land administration system. Following the preparation of a Land Policy Note in March 1998, the Government initiated the Land Administration and Management (LAM) Program. The first phase of the program aims to formalize the institutional arrangements needed to support its development—and is under way. Many different studies have been undertaken, approaches to land titling explored, and legal instruments drafted. Multiple stakeholder consultations have been held and the momentum for reform has reached a point where only specific actions and concrete results will take the agenda forward.

To improve land administration services, LRA has initiated a parallel program on the automation of land registration, by awarding a contract to a private consortium, under a build-own-operate arrangement, to computerize the functions of the Registry of Deeds. If it is implemented

¹ LAMP-PMO Report, Supervision Mission, February 2003.

² World Bank Presentation at the "International Conference on Reform in Land Administration Systems: Lessons and Challenges", November 2003.

successfully, it will complement the objectives of the LAM Program. However, several years delay in implementation and disagreement between the Government and the consortium on the fees for registration and access to data may hinder its implementation.

Options for reform

Four key areas of reform are identified: institutional reform, legal reform, property land valuation and taxation reform, and improvement of service standards in land administration.

- **Institutional reform.** To simplify transaction registrations, it is vital that the Land Administration Bill in Congress to create the proposed Land Administration Agency, which would harmonize the institutional responsibilities among the two main agencies of land administration (LRA and Land Management Bureau), is passed and implemented. The streamlining of these agencies should result in lower transaction and operating costs for the Government of up to an estimated \$10 million per year. Creation of one land administration agency would be in line with what other countries in East Asia have done.
- **Legal reform.** In the medium term, to achieve significant improvements in the efficiency of the land administration system, the Government needs to develop a comprehensive land administration law to replace outdated and conflicting laws. Nonetheless, so as not to stall the land administration process in the short term, while the comprehensive law is being prepared, the Government will need to amend the Free Patent Law to expand its administrative titling of alienable and disposable lands (presently restricted to agricultural lands), to include the distribution of free patents to residential, commercial, and industrial lands. An additional change to the Free Patent Law would be the removal of restrictions on sales of free patent mortgages in the first five years. Furthermore, the amendments should reduce the period for evidence of possession and use, from 40 years to 10 years (to be consistent with the Civil Code).
- **Property valuation and taxation.** To improve property valuation and taxation, it is important that international standards to the property valuation system be introduced and that a one-property valuation function for all purposes be established. The introduction of international standards will be facilitated by the fact that property valuation is under the responsibility of local government, and hence there should be no legal or institutional barriers. The property taxation structure will, however, need to be increased progressively to reflect the potential increments in property values, and provide greater incentive for wider and equitable property tax collection. The current tax structure on registration of transactions is one of the most onerous in the world and it is pushing the land markets toward informality. By adjusting the tax structure, the Government would increase participation in registration, and as a result increase property tax collection.
- **Improving service standards in land administration.** The low percentage of titled lands and the low participation in the registration of land transactions are a manifestation of the very slow and expensive services currently provided. The Government needs to reform the system to make it quicker and more affordable, at the same time as eliminating informal payments. This could be done through: (i) establishment, implementation, and monitoring of minimum service standards in land registration; (ii) establishment and implementation of an anti-corruption strategy in land registration to eliminate informal payments; (iii) review and downward revision of the surveying requirements, especially for low-value land, to reduce surveying costs; and (iv) review and revision of the tax structure to provide more incentives to communities to register land transactions. Establishment of a “one-stop shop” is one interim solution to strengthen coordination among the various

government agencies, until the Land Administration Agency is established.

The second phase of the LAM Program will assist the Government in (i) introducing incremental improvements in the land administration system, (ii) issuing around 500,000 titles in five provinces initially, (iii) continuing the reform agenda through supporting the adoption of the Land Administration Bill by Congress, and (iv) preparing the Land Administration Law. It will also develop guidelines and procedures for introducing international standards in property valuation.

Agrarian reform

Background

Agrarian reform is an important part of poverty reduction in the Philippines. The updated Medium Term Philippine Development Plan, 1999–2004, identified two major themes, to which agrarian reform contributes positively: (i) promotion of macroeconomic stability and equitable growth and (ii) acceleration of environmentally sustainable rural development with social equity. The CARP was enacted in 1988, with three major goals: (i) social justice or equity in terms of access to, use of, and control of, land; (ii) increase in productivity and income; and (iii) development of beneficiaries into self-reliant farmers, using a variety of instruments. The CARP was conceived to distribute approximately 8.1 million hectares of agricultural land in 10 years.

Government efforts

In 2003, 15 years after the CARP program began, about 76 percent of the program had been completed. Impact assessments carried out on the CARP beneficiaries have shown that the poverty level among the CARP beneficiaries is lower than that among non-beneficiaries by approximately 20 percent. However, there is yet inadequate evidence of significant improvement in terms of real transformation of aggregate rural poverty incidence. Overall, implementation has been slower than expected, due to limitations in financing, land valuation, and participation of the private sector and support services.

Issues

To achieve the goal of equitable land distribution and thereby increase productivity and reduce poverty, it will be important that the Government accelerate implementation of the CARP. The main issues to be addressed and resolved include: (i) provision of adequate program funding, particularly for land acquisition and credit risk arrangements; and (ii) ensuring that agrarian reform beneficiaries (ARBs) can improve the acquired land in a viable and sustainable manner. More specifically, the following need to be considered.

Financing

Under the CARP, funding for land acquisition comes from the Agrarian Reform Fund (ARF) and is complemented by regular government budget allocations. The ARF is supposed to be replenished through the amortization payments from the ARBs who finance 100 percent of the land price. Interest rates charged to ARBs are about 4 percent if payments are on schedule or 6 percent if payments are made after the due date. This rate is too low to cover the market mobilization cost of funds,³ lending operating costs, and the associated credit risk. Furthermore, the maturity of these loans is about 30 years.⁴ As a result, the ARF does not have adequate funds because its main sources—proceeds from the Asset Privatization Trust and returned Marcos wealth—are yet to fully materialize. In the specific case of the Community-Managed Agrarian Reform Program—a variant instrument for land transfer under the CARP, where direct payments from the buyer to the seller are applied—beneficiaries have again experienced

³ Five-year government bonds are being issued at about 10–12 percent per annum.

⁴ Under the Compulsory Coverage Package, the ARB will amortize the value of the land over 30 years. Yearly payments are not to exceed 2.5 percent of annual gross production during the first three years, 5 percent during the fourth and fifth years, and 10 percent starting in the sixth year. It should be noted, however, that such a scheme may not ensure that a mortgage loan will actually be paid off over 30 years. In some cases, it may be paid off earlier, and in others, it will need longer. The payment period depends on the value of the ARB's annual gross production.

repayment problems, and actual payments are around only 50–60 percent of amounts due. .

In addition, the Direct Payment Scheme, which is used for mortgage repayment for private sales,⁵ is applied literally (ARBs must pay directly to the landowner), which is a major disincentive for the seller, as repayments are solely dependent on the buyer's capacity to pay. On the other hand, although still unfavorable, the terms and conditions under "compulsory coverage" are much better as they are guaranteed: 30 percent of the value of the land is paid to the landowner by ARF through the Land Bank of the Philippines (LBP), in cash, upon signature. The other 70 percent is amortized in equal payments over 10 years at an interest rate equal to the prevailing 91-day Treasury bill rate.

Options for reform In the very short term, the ARF needs to be replenished to complete the CARP. Given the constraining fiscal situation of the Government, it is unlikely that there will be much additional funding. Rather, emphasis will have to be on improving the repayment rates by beneficiaries into the ARF. Because this alone is unlikely to yield the necessary resources, loan interest rates will need to be reviewed to ensure that they cover the market mobilization cost of funds, lending operating costs, and the associated credit risk.

Immediate action is also needed to resolve the disincentive of direct payments and to encourage landowners to participate in the CARP. A policy change is needed, to permit beneficiaries to use the Voluntary Offer to Sell instrument where the Government would provide 35 percent in cash and 65 percent over 10 years at the prevailing 91-day Treasury bill rate. In addition, the provision in the Republic Act 7905 that "a farmer and/or farm worker beneficiary shall be eligible to borrow from the LBP an amount equal to 85% of the selling price of the land that they have acquired" must be explored further for implementation.

⁵ A willing seller and buyer negotiate and agree on the land transfer.

Land distribution reclassification of alienable and disposable lands

Demand for agricultural land remains high, while government-owned lands available for distribution have significantly diminished, although privately owned lands that can be distributed are still important. Most of these privately owned lands are large-scale plantations under sugarcane, banana, coconut, etc., which require significant inputs to turn them into viable agricultural lands. In most instances though, the beneficiaries cannot easily access these inputs. In addition, if the land is left under the same cropping pattern, particularly in the case of sugarcane and coconut, the present 1.1 hectares per beneficiary will not be large enough to be viable.

Due to changing land use patterns, significant areas are still classified as forest lands, particularly those on 18° and above slopes that are no longer forested and that have essentially been converted to agricultural lands. The inappropriate land classification has made it difficult to develop appropriate land use technologies that would permit sustainable land resources management, and the effect has been degradation of uplands, even in watersheds, resulting in soil erosion.

Options for reform. Two considerations are necessary to ensure that private lands under sugarcane, banana, and coconut, if they are distributed, remain viable: first, that the beneficiaries are given large enough areas, and second, that the beneficiaries have access to sufficient inputs. When these lands are being considered for distribution, adequate reflection is needed on their viability and the ability of the beneficiary farmers to make them productive, in particular with regard to access to inputs and capital. Whether the land then becomes individually or cooperatively owned would also need to be considered.

Review and reclassification are required for lands that are still considered forest lands (particularly those sloping at 18° and above), although they have essentially been converted to agricultural lands. This reclassification requires the cooperation of both DENR, as the current stewards of forest lands, and of DAR, which would be responsible for the subsequent titling.

Once the reclassification is completed, it will be important that appropriate land management technologies are applied to curb the erosion and tackle other issues related to land degradation.

Mortgages and participation of the private sector

Under the Agrarian Reform Comprehensive Law, mortgaged land cannot be sold on the free market but only to a qualified ARB. In addition, although landowners can sell land above the retention limit⁶ they can only do so within the provisions of this Law. As a result, private banks are reluctant to accept CARP land as collateral due to uncertainties associated with its value and eventual ownership. This has weakened farmers' access to formal credit and generally stifled the functioning of a formal agricultural land market.

Options for reform The bill that is currently in Congress, "Bill on Farmland as Collateral", filed in the 12th Congress (numbers: Senate Bill No. 2553; House Bill No. 5511), to remove the restrictions on mortgaging of CARP lands, needs to be passed to allow for land markets to operate in a manner that would benefit all rural poor, including non-beneficiaries. This bill includes removing restrictions that affect the value of land as collateral and the ability of landholders to sell and lease land. Considering that under the prevailing conditions of ARB mortgages, no commercial financial institution, whether government or private, can provide funding from its own resources and bear the associated credit risk, the present mechanism in which the Government provides the LBP with the funds needed for land purchasing and takes the credit risk, will need continued support.

⁶ Maximum number of hectares that a landowner can own as provided for under CARL, i.e., 5 hectares