

Based on recent studies on land tenure and their recommendations:
Policy, program, and institutional recommendations

Abstract

Numerous studies were undertaken in the last ten years concerning land tenure in the Philippines: status, effects, conditions for success, challenges, and recommendations. This paper summarizes these studies and organizes these to provide a coherent outline. This paper likewise culls the recommendations for addressing the issues. Beyond that, this paper organized the recommendations and offered new ones to improve the resolution of the issues.

Key words: land, tenure, property

Introduction

In the last decade, several studies were undertaken with the aim of understanding and eventually improving the land tenure of Filipinos. Many of these studies were focused in rural areas where there is a multiplicity, and in many cases an overlap, of land tenure instruments. The studies raise an alarm signal: in general, property rights in the country – who owns, who benefits, and who shoulders the costs – are in place BUT these are not stable and for many, these are not formal. With population growth, with land remaining finite, with a state that is not capable of coordinating its actions and not trusted to improve tenure, and with a long history of dispossession and distrust, it is feared that the tenure gains, which are presently enjoyed, might be taken away. For Mindanao, which is in the southern part of the country, if land tenure issues remain unaddressed, these concerns could become explosive. The different studies underscore the urgent need to implement short-term and long-term solutions that will recognize, formalize, and stabilize land tenure.

This paper culls the findings and suggestions of the various studies on rural land in the Philippines that were written in the past 10 years. But more than a review of literature, this paper weighs in on the recommendations offered by the studies and from these, the paper synthesizes the reform proposals into concrete levels and sequences.

This paper is organized such that after the brief introduction, the next part gives an overview of the findings of the various studies while the succeeding part discusses the recommendations. After these, the last part offers a new set of recommendations.

Summary of research works

In the past decade, several papers were released concerning different aspects of land tenure in rural areas. These studies agree that property rights in the country emanate from and are protected by various laws that recognize and improve land tenure. However, there are serious issues which threaten the gains of tenure. This section summarizes the findings.

Laws recognize and improve rural peoples' tenure

Eleazar et al (2013), who led the study of the Philippine Land Governance Assessment Framework (LGAF), gave high ratings to the strong legal and policy framework for land in the Philippines. They noted that centuries-old laws and programs recognize long held rights. The Constitution also provides for rights recognition including the indigenous peoples' prior and customary rights.

The 1987 Constitution likewise recognized tenure rights & instituted social justice reforms. In particular, the Constitution establishes tenure rights for farmers & farmworkers and indigenous peoples which led to the passage of the Comprehensive Agrarian Reform Law (CARL) and the Indigenous Peoples' Rights Act (IPRA). The CARL covered private and public agricultural lands in excess of 5 hectares and distributed to tenants, farmworkers and other landless farmers. The IPRA recognized IPs' prior rights over ancestral lands and allowed the granting of Certificates of Ancestral Domain Titles.

The different studies (Eleazar et al 2013; Eleazar et al, 2016; Adriano et al, 2017; Quizon and Pagsanghan, 2014) noted that tenure laws and programs recognize the land rights of rural dwellers. In particular, Eleazar et al (2013), emphasized that the existing legal framework (through policies & laws) recognized the rights held by 90% of the Philippine rural population. As a result of this recognition, the people received tenure over alienable and disposable (A&D) lands as well as usufructuary and possessory rights over forested areas.

Tenure improvement contributes to improved welfare

Where land tenure is coupled with the necessary support, the studies found out that improved land tenure contributed to peoples' improved income and overall quality of life. PCED (2016), which has undertaken an impact assessment of the Comprehensive Agrarian Reform Program or CARP in terms of its monetary and non-monetary welfare effects, found out that having land in Philippine rural areas, whether through agrarian reform or other means, has substantial effects on welfare as gauged by having around 10% to 14% per capital income/expenditure. This study also found out that poverty reduction was faster in agrarian reform communities or ARCs (areas with high concentration of CARP beneficiaries and are provided with support services) than non-ARCs over the 20-year period (comparing results culled in 1990, 2000, and 2010). This study also noted that inside ARCs, the ARBs are better off than non-ARBs. These and other past studies show that the Philippine agrarian reform program has led to significant results in the lives of the beneficiaries and to an extent, to their surrounding areas (due to the availability of support services including infrastructure and capacity building).

PSRTI (2016), which has undertaken a survey of agrarian reform beneficiaries (ARBs) to know the status of the awarded lands and to assess the welfare conditions of ARB households, found out that most of the ARBs still own and possess their awarded lands. Of the 1.3 million ARBs in collective CLOA arrangements, around 79.63% or 1 million ARBs remain as such. Moreover, both collective and individual ARBs reported higher farm income compared to their non-ARB counterpart in the same area. The PSRTI research found out that the adjusted total annual income of ARBs is Php 220,671 compared to the adjusted annual income of non-ARBs, which is Php 101,994. This meant that being an ARB can raise total income of smallholder farmers to more than double if this is benchmarked against non-ARBs. The study surmised that aside from land, being an ARB can help secure better access to factors of production that contribute to increased total household income. Moreover, the adjusted estimate total income among farmers in ARCs is Php 200,116 whereas those in non-ARCs is Php 135,875. This meant that the benefits from various interventions in ARCs could raise total household income by 47%. The study further noted that an ARB in an ARC can generate 8% more income.

But the laws are sectoral and confusing and the agencies that implement the laws overlap and they neither talk nor share information

The studies note that old land laws in the Philippines do not completely retire. Quizon and Pagsanghan (2014) found out that while new laws or amendments are continually being passed, old land laws are often not repealed and sections of these previous laws are merely superceded, replaced, or amended and thus, these retain their residual validity in whole or in part (i.e. CA 141). The overall result is a

complex system of jurisprudence. Moreover, the laws are highly sectoral which create conflicting policies, overlapping agency mandates, & policy gaps. Other Asian countries have comprehensive & consolidated Land Law or Land Code.

Eleazar et al (2013 and 2016) emphasized that while land rights are recognized and safeguarded by policies, the institutional framework for the land administration management is composed of multiple agencies with overlapping mandates. Eleazar et al (2016) noted that there are at least 4 agencies that issue first time titles, 2 agencies involved in the review and approval of survey plans, multiple agencies on land management.

Still, despite this multiplicity, there is no single reference map and so each agency has a repository of independent records and maps. There is also no mechanism that coordinates the actions of the different agencies. Because of this, it is difficult for various publics to access a complete and reliable set of land records. This makes it difficult and expensive to verify survey returns and land titles (Eleazar et al, 2016).

As such, there are numerous instances of duplicate or overlapping instruments of rights recognition over the same land parcel. In Milalitra, Bukidnon in Mindanao, for example, a Certificate of Ancestral Domain Title (CADT) was issued by the National Commission on Indigenous People (NCIP) to the Talaandig Tribe. But inside the CADT, there are A&D lands with individual lots and titles. Many are privately owned or patented while some were covered by the CARP even before the CADT was issued (Eleazar et al, 2016). Overlapping and conflicting claims such as this cause stresses in communities, challenge the confidence of the people on their land instrument, and limit the investment potential of the land.

There are serious problems besetting the acquired agrarian land

The studies also noted key challenges in the lands distributed by the agrarian reform program. In Mindanao and other places with agribusiness venture agreements (AVAs) or contracts involving the beneficiaries and private investors, problems arise in situations where the farmers demand an end to their AVAs because of issues including low returns (FAO Study, 2016). The study showed that despite more than 26 years since AVAs were first inked, there are very few examples of successful arrangements between private investors and agrarian reform beneficiaries. Most of the ARBs are not aware of the entitlements and obligations under their contracts and they lack adequate technical and legal assistance that can improve their understanding of their agreements. The study found out that the farmers' organizations have limited capacity to run and operate their farms, make collective decisions, understand financial statements and enter into intelligent negotiations.

In AVAs involving land lease, some of the issues include low rental rates and minimal farm wages (given that most of the contracts stipulate that the land will be managed by the private investor while paid labor will be given by the smallholder farmers). It was also found out that the farmers organized by the government and they did not go through a solid discussion of issues, did not have enough information, and as a matter of fact, many of the farmers did not give an informed decision when they agreed to their AVAs. As such, many of the "farmers' groups" now have infighting over the decision on their agribusiness contracts.

What makes the situation worse in these AVAs is that the awarded lands of the ARBs are covered by collective land titles wherein the CLOA is named under the farmers' groups (FAO Study, 2016). Many of the farmers' decisions – whether to join the AVA or remain the organization – is tied to their collective land title. In some instances, the farmers' removal from the organization (as members) caused them their awarded lands. The PSRTI (2016) study, which included some of the ARBs involved in AVAs, also

found out that most of those in AVAs are from the collective type of ARBs. By mode of acquisition, collective ARBs were from voluntary land transfer, voluntary offer to sell and some compulsory acquisition. It can be surmised that as soon as the lands were awarded to these beneficiaries in collective land titles, they were organized by beneficiaries to enter into AVAs without clear discussions of issues and implications of decisions.

Aside from the AVAs, collective titles are a main issue in agrarian lands. Based on data from the Department of Agrarian Reform, of the total 4.7 million hectares of land that it covered and issued with Certificates of Land Ownership Award (CLOAs), around 2.168 million hectares were covered by collective CLOAs. The issuance of collective titles was supposedly a temporary measure to fast track distribution but these titles should have been immediately subdivided individual titles should have been issued (De Los Reyes, 2016). But time dragged on and as of January 2016, less than half (1.064 million hectares) of the collective CLOAs have been subdivided. More unfortunately still, around 115,816 hectares have been found to be timberlands, forests, roads, and watersheds, which should not have been covered by CARP. If all the deductibles are removed, there remains around 848,420 hectares under collective CLOAs for subdivision.¹

The studies noted that at present, the collective land titles hinder the investments of farmers and the private sector in the agrarian lands. In certain situations, where the original ARBs were amenable to the collective titles and have formed social capital with fellow members and co-beneficiaries, their heirs, who are now the tillers and decision makers over the land, do not have the same levels of trust with others. Moreover, Eleazar et al (2013) and Eleazar et al (2016) also emphasized that collective titles discourage real property taxation of local governments. For many credit providers, lending to ARBs becomes all the more problematic in cases of collective CLOAs.

High transaction cost for transferring land

A number of the studies also highlighted the issue of high transaction cost for transferring land ownership. The rules on and costs for transfer actions discourage formalization efforts (De Los Reyes, 2016). Quizon and Pagsanghan (2014) note that there is no national standard and common method for valuing real property. Different agencies apply several systems and methods in valuing properties and the private sector undertakes its own valuation for bank lending, insurance, purchase and sale of real property by investors. Land valuation systems and actual sale prices are not accessible to the public and unfortunately, there are no set standards for transparency and accountability about these systems and costs.

The operative laws for land transfer is the Property Registration Decree, the Civil Code, and the Comprehensive Agrarian Reform Law. These three laws make it difficult for various types of land, much so agrarian lands, to be transferred. Layered on top of this is the National Internal Revenue Code and its strictures on estate taxes or donors' taxes. In tandem, these two rules impede and discourage the formal transfer or donation of awarded lands upon death of the smallholder farmer (De Los Reyes, 2016). In other countries, the benchmark for land title transfer is 1% of the market value of the land while in the Philippines, title transfer, together with taxes and fees, amounts to around 10% of the market value (Eleazar et al, 2013).

An informal system prevails

¹ However, the present DAR administration opted to suspend CLOA subdivision.

The Ph-Australia LAM Project (2004; cited by Eleazar et al, 2016) estimates that there are around 11.18 million untitled parcels in the Philippines (i.e. no formal confirmation of ownership). These untitled parcels represent 46% or around half of the total parcels in the country. It is surmised that these parcels are not vacant; rather, these are occupied by various dwellers whose claims have no legal recognition and protection. Moreover, there around 755,000 hectares of unclassified forestlands in the country. Like the untitled parcels, it is inferred that some of these forest areas already have occupants whose possession is not recognized and protected.

The agrarian reform program shows evidence of informal transfers (i.e. without documentation and concomitant change of title owner/s). The land administration system and the taxation system make it very difficult and costly for beneficiaries to transfer their land title to heirs and buyers (De Los Reyes, 2016). Many of the program stakeholders also frown on beneficiaries who sell or mortgage their awarded land. This probably adds to the informal under-the-radar land transactions.

Interestingly, the PSRTI's survey of agrarian reform beneficiaries (2016) noted that in general, land parcels are still cultivated by the beneficiaries (95% for recipients of individual CLOAs and 85% for recipients of collective titles). The same survey, however, also underscored that the average age of beneficiaries is 55 years old. Assuming the beneficiaries still cultivate most of the parcels awarded to them, it will not be long when they need to transfer these to heirs or others. In fact, based on informal discussions with them, some of them would have preferred that the awarded lands were transferred earlier to their heirs, however, they are barred by the cost involved.

The property rights problems could be traced to a long history of dispossession

Some of the studies trace the land tenure issues to the colonial period when the colonizers did not recognize the native titles and the arrangements which were existing when they arrived in the colony. Rather, the Spanish colonizers imposed the Regalian Doctrine or the principle that all lands belong to the state (Eleazar et al, 2016; Lynch, 2011; Abinales and Amoroso, 2005). The Regalian Doctrine allowed the Spanish colonizers to reward their loyal and opportunistic subjects. When the Americans arrived, they imposed the Torrens System based on the occupancy of the lands. Those who were pushed by the Spaniards in the hinterlands were further marginalized. Towards the end of the American period until around 1950s when the Philippine Republic already took effect, the government opened Mindanao to resettlement. While at first this was not totally unwelcomed by the inhabitants of the region, it eventually became apparent that resettlement disenfranchises some sectors and groups (Adriano et al, 2017).

The story of dispossession and marginalization came along with the attempt to make transactions difficult and expensive to maneuver. As a result, understanding of and access to land and formal documents were only available to those who have the resources to maneuver the land administration system (De Los Reyes, 2016).

Summary of recommendations

The studies offer various recommendations for addressing the major problems in recognizing, improving, and stabilizing the property rights of rural dwellers. This section summarizes the major recommendations.

Design and implement administrative mechanisms to address the overlaps and issues in land administration this includes removing overlaps and duplication of functions. This mechanism should strive for a common reference point and be given the administrative and quasi-judicial powers. One proposal is to create a single land administration agency that consolidates the functions of land survey,

titling, and adjudication (Eleazar et al, 2013; Eleazar et al, 2016). Moreover, it is best if the agencies working on land administration and management are placed into one institution to force the streamlining of survey, registration, and titling of lands (De Los Reyes, 2016). Doing this will address the difficulty in securing all the land documents, lessen the transaction cost, and more importantly, address the cases of overlapping and conflicting land claims.

Unify all title deeds and create a uniform projection map that shows granular details. The different agencies that work on land administration should develop and commit to use an inter-operable land administration system which reflect all the interests on the land, their status, metes and bounds, and eventually, when conflicts are settled, have these interests registered. Along with this proposal, government agencies and those with interest on the land should have improved access to land information (Eleazar et al, 2013; Eleazar et al, 2016).

Encourage local government units (LGUs) to develop or adopt tenure improvement programs. LGUs are also in a good position to resolve tenure issues including issuance of special patents in proclaimed lands, mediation of conflicting claims, and providing resources for subdivision of collective agrarian land titles. Aside from this, LGUs should also be encouraged to set up unified land information system to reflect the parcels within their jurisdiction. If undertaken, these efforts could have useful effects on improving land tenure, land use planning and management, and property valuation. Eventually, these could improve the tax collection of LGUs. However, this means helping LGUs obtain and strengthen their capacity on property taxation and valuation. This includes assisting them in developing complete property records to serve as basis for updated tax maps that will reflect the land parcels. This could also mean helping them with the computerization of their real property tax system (Eleazar et al, 2013; Eleazar et al, 2016).

Aside from those major recommendations, the various studies also suggest:

Subdivide the collective land titles issues under the agrarian reform program (Eleazar et al, 2013; Eleazar et al, 2016). This means addressing the different bottlenecks in each and every collective title. The studies firmly recommend the conduct of subdivision surveys and the parcelization of land titles given its potential effects on land productivity, agribusiness investments, and jobs generation.

Simplify succession rules, which means simplifying the process and lessening the transaction cost of transferring or donating lands. In regard to agrarian reform, this means facilitating the transfer of agrarian reform-awarded land from a beneficiary who is unable till the land because of advanced age, disability, or disinclination to other landless rural poor who are able and willing to till the land (De Los Reyes, 2016). This is echoed by the FAO (2016) study when it recommended the discussion of the challenges and opportunities that the current rules around succession in ARB cooperatives in capacity-building activities.

Simplify the taxes on estate, the filing of estate settlement, and land registration in order to encourage the transfer of titles to actual owners (Eleazar et al, 2013; Eleazar et al, 2016).

Study what accounts for the untitled land parcels. Along with it there is a need to delineate the forest line (Eleazar et al, 2013; Eleazar et al, 2016). Eventually, it is important to address the claims on those untitled parcels and to recognize the possession or occupancy of those who reside in these parcels.

Particular to the agrarian reform program, it is recommended that after 5 decades of implementation, the program should now move away from the original goal of mitigating landlessness towards innovative rural development (PSRTI, 2016). This means delivering a coordinated development assistance to

smallholder farmers (PIDS, 2016) since these – low farm productivity, insufficient cash flows, limited capacity to handle their organizations – are considered as risks and serve as major barriers to their access to credit.

Particular to the indigenous people, it is recommended that IPs are supported in their development of ADSDPPs which, if properly prepared, will delineate conservation areas including burial sites and sacred grounds (Eleazar et al, 2013; Eleazar et al, 2016).

Weighing in on the recommendations

The studies already provided clear recommendations for recognizing, improving, and more so, stabilizing the land tenure of smallholder farmers and other rural dwellers in the Philippines. This section of the paper adds value by categorizing the recommendations into level and later on, by synthesizing a clear prioritization or sequencing of reforms. In putting it this manner, the proposed reforms become clearer and easier to handle.

In general, the recommendations of the studies could be categorized into program level, policy level, and institutional arrangement level. Looking at the issues this way provides clear handles on the problems.

At the **program level**, there is a need to coordinate the delivery of the various land tenure programs in the country. As the studies point out, the land tenure programs are highly sectoral. Staying on this course and not giving due consideration to the overall land tenure and land administration management in the country led to major issues including overlapping and conflicting claims. In turn, these led to serious conflicts in rural areas. It is time to look at the various land programs and ask the hard questions. For instance, the IPRA, it appears, was passed without a clear assessment of its effects on the laws pertaining to use of timber land. This has remained largely unsettled and unaddressed and is one main sources of insecure tenure. In regard to this, it is also imperative to accelerate and improve the process of administrative and systematic adjudication of land rights to resolve issues. This resolution must be undertaken in a transparent and participatory manner.

Moreover, it is important at the **program level** to establish a single and integrated land information system for all types of land. This land information system shall record property rights, interests, land use, regulations and restrictions, and boundaries. Moreover, to remove the silos in land administration, the land information system should be shared among agencies and accessible to the public, including the local government units.

At the **policy level**, it is time for key laws to be passed. It is recommended that a Land Code, which is a comprehensive law that revisits the cadastral law, public land law, property registration decree, and surveying rules, be enacted. As a companion to the Land Code, the law that delineates the forest line, must also be sent to Congress for immediate review and passage. The adoption of tax reforms is also recommended including the condonation of onerous charges.

At the **level of institutional arrangements**, it is suggested, particularly in the absence of a single and integrated land information mechanism, to put all land administration management agencies into a single agency that administers the functions of land titling, surveying, and adjudication. This agency will take on the task of maintaining the registry of land titles into a single reference map.

Overall, these reforms are necessary and urgent. Many of the studies and the discussions with experts note that if the issues on overlapping claims are not discussed and resolved, if the cases of erroneous survey and land titles are not addressed, and if the untitled parcels and unclassified forest areas are not

looked into immediately, the issues could pose serious conflicts. Many experts believe that these concerns are explosive particularly in Mindanao, which has a long history of dispossession.

In this regard, it is important to sequence the reforms. The former Land Administration Management Project (LAMP) highly recommends doing so. It is clear that while most of the proposed reforms could be undertaken simultaneously, it is necessary to **do key steps in sequence** in order to gain champions for the reform process. In this regard, it is highly recommended that **immediately, implement key program reforms**. The policy and institutional arrangements are important but these could come in later especially since thus far, there are only a limited number of champions for these proposals.

Sequentially, it is important to have a single reference mechanism for the land administration reforms. At the program level, develop and utilize a map that is acceptable to all, to see what are the boundaries. The cadastral survey, which is being finished, should serve as the common reference point to see the political boundaries. Afterwards, address the issues on political boundaries (through administrative procedures) while starting the resolution of claims plot-by-plot (through administrative, quasi-judicial procedures). Discussions with key experts suggest that in this critical process, ask members of congress to sit down in the discussion of political boundaries so that when the proposed laws on land boundaries are put in congress, and hopefully, when the proposed Land Code and forest delineation line are filed, there will be lesser time allotted for hearings and debates. In the addressing of claims issues plot-by-plot, craft a mechanism which ensures that the people will not resort to judicial remedy without going through the quasi-judicial process of resolving issues. In this context, it was recommended that members of the court be asked to sit in this discussion of claims and to affirm adjudication agreements once reached.

Afterwards, and assuming there are already stakeholder champions, file the proposed bills including the ones that intend to reform the institutional arrangement.

Summary

This paper provided a summary of the various studies that were written on rural land tenure – the status, issues, and challenges – confronting recognition, improvement, and stability of tenure of rural dwellers. This paper also gave a summary of the proposed recommendations. Beyond that, however, this paper categorized the suggestions and offered a new set of recommendations

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