

Property Rights in Land Reform Areas

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Land redistribution or the transfer of ownership rights to the tiller has been the focal point of the land reform program in the Philippines. This transfer was envisioned to result in a significant shift in income and productivity in the agrarian sector. While some equalization of incomes may have indeed occurred, the full benefits of this asset transfer, however, have not been realized.

Why? There can be several reasons but in recent years, the problem of property rights has been the focal issue. True, land reform might have provided the tillers with access and ownership to agricultural lands but said lands were practically “dead capital/asset” because the property rights over them are “imperfect” due to regulatory and bureaucratic impediments.

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This *Notes* traces the roots of the problem of property rights in land reform areas and looks into their implications.

The land redistribution process: progress and problems

Land redistribution involves the state’s (a) acquisition of private agricultural lands, (b) proclamation of public lands as alienable and disposable, and (c) subdivision and award of nonprivate agricultural lands to identified beneficiaries. Private lands include lands owned by private individuals or corporations and lands titled to specific government agencies/corporations, including government-owned banks. The acquisition of private lands can be compulsory or voluntary, i.e., agricultural lands identified by the government for land reform will be subject to redistribution whether an owner submits the land for coverage or not. On the other hand, public lands are state lands and require proclamation as alienable and disposable (A&D) before they can be distributed for private ownership. A&D lands which have not yet been titled to any entity but are managed by government agencies are held as nonprivate agricultural lands or government lands such as resettlements, landed estates and others.

The land redistribution program has been implemented in phases. The first land reform law was enacted in 1963 but land redistribution on a national scale only began in 1972 with the passage of the Land Reform Act (Presidential Decree 27) for rice and corn lands. In 1988, a comprehensive agrarian reform law (CARL) was enacted which expanded

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the coverage of land reform to include all other types of agricultural lands regardless of crop or fruit produced and tenurial arrangement.¹ Land acquisition and distribution was envisioned to be completed in a period of 10 years beginning June 1988 but so far, only less than two-thirds of lands covered by the reform program have been distributed.

Several problems caused the delay in the implementation of the program. These were in the following areas: (1) identification of beneficiaries and actual coverage of the reform; (2) land valuation; and (3) land titling.

Identification of beneficiaries and coverage

The process of land redistribution starts with the identification of the lands and owners to be covered by land reform. It involves the conduct of a joint field survey by the Department of Agrarian Reform (DAR), the Department of Environment and Natural Resources (DENR) and the LandBank.² DAR also simultaneously draws up the lists of beneficiaries which consist of people working on the land and are physically present in the area. However, this is a difficult task because there are no updated lists of farming households in barangays. Obtaining the names of seasonal and other farm workers is even more difficult since most often, these workers live in different sitios or municipalities. Information on the tenants, farm workers and tillers has been imperfect and has led to conflicts between the landowner and beneficiary (i.e., landowners consider some beneficiaries as squatters instead of tenant/worker) or among tenants.

Another source of conflict is the actual area to be covered by land reform. This stems from conflicts in the retention limits of landowners and heirs and from problems in land use regulations.

The land reform law allows owners to retain land up to seven hectares for rice and corn land and five hectares for other agricultural lands. In addition, each heir is allocated an area of up to three hectares. The law also allows the owners and heirs to choose the areas to be retained but the beneficiary is given the option to choose whether to remain in the area or be a beneficiary in the same or another agricultural land (Sec.6 RA6657). Identification and measurement of the area to be retained, however, has become a problem despite the conduct of a survey. Patents (EPs or CLOAs)³ have appar-

ently been distributed for lands covering retained areas of owners/heirs. The presence of this problem is reflected in pending cases at the DAR courts which include significant conflicts on retention limit.⁴

Poor land use planning in the country has also created difficulties in identifying the actual coverage of land reform. A study by Silva (1993) noted that Town Plans of municipalities cannot be used as guide for development. These Plans are merely physical plans for built-up areas with little attention given to areas outside of the town proper. Moreover, the Town Plans have been considered technically deficient with the land allocation criteria applied not based on well-conceived and valid guidelines.

Thus, in many areas, the extent allocated for nonagricultural uses has often been in excess of what was needed and the bulk of land zoned as nonagricultural is either used for agriculture or is idle. In the implementation of the CARP, there have been areas identified as covered by land reform but are being contested because these areas have been zoned as nonagricultural lands. On the other hand, areas zoned for agriculture use have become urbanizing lands and are thus potential areas for land use conversion. Land use issues, i.e., conversion, exemption, coverage, protected areas, are among the main reasons for cases filed on land reform, constituting about 16 percent of the cases currently pending at the DAR.

Land valuation

Lands distributed to tillers or farm workers may be compensable or noncompensable. Public lands and nonprivate

¹A 10-year moratorium was provided to commercial farms utilized for aquaculture, livestock and poultry farming.

²DAR and the DENR are the key government agencies involved in the land reform program. DAR is the overseer while DENR complements DAR by taking the task of redistribution of public lands.

³Patents are titles of ownership. Emancipation Patents (EPs) are provided to beneficiaries of the land reform law of 1972 while the Certificates of Land Ownership and Acquisition (CLOAs) are those given to beneficiaries under the 1988 agrarian reform program (CARL or RA 6657).

⁴About one third of pending cases at DAR courts as of 2003 are due to conflicts in retention limits. Some cases though may have been filed even prior to the issuance of EPs or CLOAs.

agricultural lands are noncompensable, implying that government subsidizes the cost of land and beneficiaries pay only some administrative costs. On the other hand, privately owned agricultural lands are compensable and beneficiaries have to pay government the cost of acquiring the land.⁵

The agrarian reform law provides that payment for private agricultural lands shall be based on “just compensation.” Just compensation implies that valuation is based on a number of indices like the cost of acquisition of the land, the current value of like properties, actual use and income, sworn valuation of the owner, tax declaration, and assessment made by government assessors. These indices have been subject to significant bargaining tactics and valuation has never been transparent (Adriano 1994). The system has also been used by landowners to delay implementation and tended to corrupt the bureaucracy.

Majority of landowners in fact (57 percent of those surveyed in 1992) have rejected the valuation of their land assessed by the government and have lodged appeals in special agrarian courts. Results of such appeals have generally been in favor of the landowners (Adriano 1994).

Land titling

The formalization of property rights in the country is supported by a land registry system that includes the recording or registration of property titles with the Land Registration Authority (LRA). Such registration is critical since it signifies the state’s recognition and guarantee over the individual’s/corporation’s property rights. This same principle on property registration has been applied on lands redistributed under land reform. However, the registration process has been complicated.

First, land titles in the form of EPs or CLOAs have been registered and distributed even prior to the acceptance of the landowner of the valuation or payment in full,⁶ thereby creating conflicts and confusion. When the Supreme Court (SC) reversed this procedure in an administrative order in 1990, stating that landowners must be paid first prior to the registration of titles, said SC decision, however, created a setback in the immediate transfer of land. Thus, a compromise was reached wherein the registration of CLOAs/EPs proceeded and a deposit account in the name of the

landowner was created by the LandBank.⁷ In cases where conflicts arise in the coverage of CARP and the courts rule in favor of the landowner, registered and distributed EPs/CLOAs can be withdrawn.

A second complication is that the agrarian reform program allowed the issuance of collective CLOAs.⁸ A collective CLOA signifies collective ownership, with the formation or registration of an organization (or cooperative) being required. The title (or mother CLOA) is issued in the name of the farmer’s organization or cooperative. This scheme allows for easier registration of titles since the transfer is only made to one juridical entity and a subdivision survey is not needed. However, while each beneficiary has been assigned an area, the actual size has yet to be verified. Moreover, the collective CLOAs have been issued mainly to farmer’s organizations with members acting individually rather than functioning as cooperatives. With the title being collective, no one member can sell, mortgage or use as collateral the title to obtain a loan or capital in the formal market. About 18 percent of the CLOAs issued are collective titles which cover an area of about 1.6 million hectares or 46 percent of the total land area awarded under the land reform programs.

Other forms of land transfers

The transfer or conveyance of lands acquired through the land reform program is allowed by law but restricted by the following land regulations: (a) transfers, mortgaging or any

⁵There is, however, an option for a voluntary land transfer (VLT) agreement whereby the landowner and tenant(s) agree to a direct purchase. The land is not purchased by government but is transferred to the tenant/beneficiary who agrees to pay the landowner directly based on a contract, the terms and condition to be approved by the DAR.

⁶EPs and CLOAs like Transfer of Certificate Titles (TCTs) are recognized as legal titles to land. These titles indicate that lands have been acquired through the land and agrarian reform programs. When such lands are transferred by the awardee to a transferee by virtue of inheritance or sale, TCTs are issued by the LRA (DAR AO 8 s. 1995).

⁷The title of the landowner is not cancelled but only annotated stating that the land is covered by CARP and the names of the beneficiaries of the land are indicated in the title.

⁸The issuance of collective patents has been applied only to land redistributed under the CARP (RA 6657). The earlier land reform law (PD 27) does not have this feature (i.e., there are no collective EPs).

form of conveyance are not allowed within 10 years of award and upon full payment of purchase price; (b) ceiling of land ownership of agricultural lands is pegged at five hectares; and (c) only qualified agrarian reform beneficiaries as identified by DAR and the LandBank can buy awarded lands. Despite these regulations, however, buying, selling and other forms of transfers have taken place in significant numbers. Some farmers have in fact accumulated agricultural landholdings beyond the five-hectare ceiling on ownership. Recording these transfers, however, has not been easy because in some areas, such transfers have not been openly acknowledged. In other areas, though, these transactions are socially acceptable and in many cases, have been formalized and legalized through informal channels of land registration (David 2003).

A common form of transfer that has emerged in the agrarian areas is land pawning. In a pawning arrangement, the pawnee (lender) takes over the cultivation of the land until the loan is repaid. The terms of the loan are highly variable, i.e., interest rate ranges from 20 to 50 percent (Nagarajan 1989; Fukui 1995); loan amounts per hectare differ depending on the need and productivity of the land; and the loan contract may last from one year to more than 10 years. Pawning of land has apparently emerged as an arrangement in the informal credit market to obtain long-term loans.

Several studies noted the extent of selling, buying and pawning in agrarian areas. A 1994 study by DAR covering 23 provinces showed that the proportion of EP recipients, who sold, pawned or “illegally” transacted lands acquired through land reform ranged from 7 to 74 percent per village (Table 1). Among holders of CLOA titles, the proportion of recipients transacting their lands ranged from 2 to 100 percent in the 16 provinces sampled. The 2003 survey of 11 palay and coconut villages in four provinces also indicated the prevalence of selling and pawning of agrarian reform-awarded lands. The percentage of agrarian reform beneficiaries (ARBs) who sold their awarded land varied from seven percent in the Quezon villages to 56 percent in a village in Laguna (Table 2).

It is important to note that pawning and selling transactions are supported by formal written contracts, witnessed by barangay or village officials and sometimes performed by

lawyers. Some pawning arrangements involve the annotation of titles in the Registry of Deeds and most selling arrangements are also formalized and documented in the Registry of Deeds.

Typology of property rights in land reform areas

The implementation of land reform in the country has given rise to “insecure” property rights in agrarian areas partly because of the unfinished land acquisition and distribution program and partly due to prohibitions in the transfer of awarded lands. These rights may be categorized on the basis of the legitimacy and ownership claims on land. Some rights are relatively tradeable than others because the legality of ownership has been established.

In general, as shown in Figure 1, beneficiaries who have obtained individual titles to lands acquired under land reform whereby landowners have been paid (in case of private lands) can claim full or absolute legal ownership rights. On the other hand, there are beneficiaries who received titles but ownership needs to be verified or are being contested in courts. Thus, while these rights are strictly legal, they are contingent on future decisions or actions. So far, there is no summary documentation of how much of the awarded lands are contestable but their presence hampers the efficacy of the rural land market.

Pawning and land lease rights that could have emerged because of land regulations and limited development of the rural credit market, have contingent ownership claims. These forms of transfers are “illegal” based on agrarian laws but are widely practiced. In some cases, pawning contracts have been legitimized through informal channels of land registration. There is no effort (or it is costly) to monitor these exchanges. Many transactions are covered only by verbal or informal contracts and the risk of losing land rights is high since contracting parties have limited legal protection in cases of conflict.

Policy implications

What do all these developments in the agrarian areas imply? It is clear to note that the extent of those having insecure property rights is quite significant in the land reform areas. This situation has thus constrained the transferability or tradeability of agrarian lands. As such, it is important

Table 1. Number of recipients of emancipation patents (EPs) and Certificates of Land Ownership Awards (CLOAs) and percentage of those with transactions in selected villages in 23 provinces, 1994

| Province ^a | % recipient with transaction | | | | | | | |
|-----------------------|------------------------------|---------|------------|---------------------|-------|---------|------------|---------------------|
| | EP | | | | CLOA | | | |
| | All | Selling | Mortgaging | Others ^b | All | Selling | Mortgaging | Others ^b |
| Pangasinan | 8.0 | 7.8 | 0.6 | - | 5.6 | - | 1.9 | 3.7 |
| Isabela | 25.7 | 16.1 | 8.3 | 2.3 | 21.4 | - | 7.1 | 14.3 |
| Pampanga | 6.8 | 1.7 | 1.7 | 3.4 | | | | |
| Nueva Ecija | 23.0 | 12.7 | 7.1 | 4.8 | 28.6 | 25.7 | 2.9 | - |
| Bulacan | 7.7 | 6.0 | 1.7 | - | | | | |
| Quezon I | 87.1 | 12.6 | 2.9 | 71.7 | 38.6 | 1.1 | 11.4 | 35.2 |
| Quezon II | | | | | 100.0 | - | - | 100.0 |
| Cavite | 44.1 | 44.1 | - | - | 16.7 | 16.7 | - | - |
| Laguna | 61.0 | 61.1 | - | - | 100.0 | 100.0 | - | - |
| Sorsogon | 13.9 | - | 13.9 | - | | | | |
| Camarines Sur | 8.6 | - | 6.0 | 2.6 | 7.0 | - | 7.0 | - |
| Negros Occidental | 13.5 | - | - | 13.5 | 18.0 | - | - | 18.0 |
| Antique | 21.1 | 6.6 | 14.5 | - | 9.5 | - | 7.1 | 2.4 |
| Bohol | 4.0 | 0.8 | 1.6 | 1.6 | 5.3 | - | 2.6 | 2.6 |
| Negros Oriental | 20.0 | 0.7 | 17.2 | 2.1 | 1.8 | 0.2 | 1.3 | 0.2 |
| Leyte | 74.1 | 11.1 | 63.0 | - | 21.3 | 21.3 | - | - |
| Zambonga del Sur | 50.0 | 2.4 | 47.6 | - | | | | |
| Bukidnon | 25.6 | 6.2 | 11.6 | 7.8 | | | | |
| Agusan del Sur | 6.9 | 6.9 | - | - | 36.4 | 27.3 | - | 9.1 |
| South Cotabato | 10.1 | - | 7.9 | 2.2 | | | | |
| Davao del Norte | 16.1 | 8.6 | - | 7.5 | 8.3 | 6.5 | 1.9 | - |
| North Cotabato | 9.3 | 5.7 | 3.6 | - | 13.3 | 13.3 | - | - |
| Lanao del Norte | 19.1 | 10.9 | 8.2 | - | | | | |
| Average | 17.2 | 7.2 | 7.0 | 3.3 | 26.5 | 20.1 | 1.9 | 5.0 |

^aRows show data for a village in the province indicated. Sampled villages in each province are different for EP and CLOA recipients. Only 16 villages were sample for CLOA beneficiaries.

^bIncludes transfer of rights, leasing abandonment and waiving of rights.

Source: Department of Agrarian Reform. 1994. A Study of the extent, nature and causes of illegal transactions and violations of EP/CLOA recipient in selected sites of the SOPs and non-SOPs. Policy and Strategic Research Service, DAR.

for the government to address the regulatory and bureaucratic impediments that have given rise to insecure rights. In particular, increasing the transferability of land reform awarded lands would legitimize the use of more efficient contractual arrangements. For instance, land leasing which may take the form of fixed rentals or sharecropping arrangements may provide a better alternative for farmers with little capital, family labor or draft power to operate the land or for farmers who have better access to nonland-based livelihood opportunities. This arrangement would also allow the landless, marginal farmers to gain access to land. Moreover, if

there were less restrictions on land transfers, more acceptable land-pawning arrangements where cultivation rights are not lost but where forfeiture clauses instead are agreed upon, may emerge as a new scheme of things (David 2003).

Better governance may also result from the lifting of restrictions on the transferability of awarded lands. Documentation of agriculture land ownership has become distorted because transactions have not been transparent. With the removal of the restrictions in the tradeability of agrarian lands, transactions on land will be more transparent, records

Table 2. Distribution of EP/CLOA recipients with transactions, 2003

| | Number of EP/CLOA Recipients | % of recipient with transaction | |
|---------------------|------------------------------|---------------------------------|----------------|
| | | Sold | Pawned |
| Nueva Ecija | | | |
| Bakal II | 189 | 39.7 | 18.0 |
| Maragol | 145 | 15.2 | 12.4 |
| Gabaldon | 100 | 21.0 | 8.0 |
| Pinili | 128 | 14.1 | 13.3 |
| Laguna | | | |
| Tubuan | 23 | 21.7 | 13.0 |
| Masapang | 43 | 55.8 | - ^a |
| Quezon | | | |
| Sta. Catalina Sur | 298 | 6.7 | 7.4 |
| San Isidro | 137 | 6.6 | 2.9 |
| Iloilo ^b | | | |
| Pandan | 39 | - | 10.2 |
| Rizal | 7 | 14.3 | 14.3 |
| Signe | 7 | - | - |

^aUsing more detailed farm survey results indicated that 35 percent of sample farm household (or 16% of their area) have pawned out in this village
^bIn these villages there are more leaseholders than ARBs.

Source: C. David et al. 2003. Table 4.1a. Land reform and land market transactions in the Philippines. Terminal Report. Philippine Institute for Development Studies.

of ownership of agricultural lands reconciled, corruption in the bureaucracy lessened and the way for the implementation of a progressive land tax would be easier. 📄

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Figure 1. Typology of property rights in land reform areas

| | | Ownership Claim? | |
|----------------|-----|--|--|
| | | Absolute/Full | Contingent/Contestable |
| Strictly Legal | Yes | <ul style="list-style-type: none"> Ownership rights (with individual title; landowner paid and beneficiary fully paid) | <ul style="list-style-type: none"> Collective CLOAs (no individual titles, land subdivision survey incomplete with possible existence of overlapping areas; landowner paid) Contestable rights (coverage award/ valuation contested by landowner or other claimants; landowner not paid) |
| | No | <ul style="list-style-type: none"> Concealed ownership rights (formally registered transfer of ownership through informal channels) | <ul style="list-style-type: none"> Pawning rights (transfer of cultivation rights) Land – lease rights (oral contracts) |

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