

4.0 | Agrarian reform in public lands

The Philippines covers a land area of approximately 30 million hectares, classified into two major categories: *alienable and disposable lands* (A&D), and *forestlands* (non-A&D) that is also referred to as the public domain. A&D lands cover 14.2 million hectares and may be issued titles and used for residential, agricultural, commercial and other uses. The remaining 15.8 million hectares are forestland (non-A&D) which are deemed belonging to the State or community and cannot be alienated unless provided for by law.¹⁶

Forest dwellers. An estimated 20-30 percent of the population live in classified forestlands, and depend on forests, farmland and fishing waters for their homes, food and livelihoods. They include indigenous peoples, many of whom are without security of tenure. Although there is no comprehensive census of forest dwellers, an estimated 17-22 million people who depend on forests have no legal tenure rights (Fortenbacher and Alave, 2014).

Poverty prevails among communities in these areas. Studies show that upland settlers have an average household size of 4.7 people, and earn between PhP23 and PhP52 per person, which is below the World Bank-defined poverty line of US\$1.25 a day. Deforestation (estimated at an annual rate of about 100,000 hectares in 2014) further contributes to the marginalization of forest dwellers (Fortenbacher and Alave, 2014).

With continued economic and demographic growth, there has been increasing competition for land and natural resources. This leads to unsustainable use, loss and depletion of forest, soil, biological diversity and water resources. Furthermore, climate change and natural disasters further exacerbate these pressures.

¹⁶ In the Philippine context, the term “forestland” refers to all property owned (or claimed) by the State based on the official system of land classification. It is a legal and tenurial status, not a botanical description, as in reality much “forestland” may not contain forests or trees. However, lands classified as *forest use* (aka “forests”) consist of 6.8 million hectares, with 6.1 M hectares in non-A&D lands, and 0.7M hectares in classified A&D lands. Data from DENR. 2016 Philippine Forestry Statistics.

Tenure over forestlands can mean sustenance for the poor as well as protection of natural resources. It is in this context that CARP included public lands in agrarian and tenure reform. This section briefly describes DENR's accomplishments on tenure reform and identifies some emerging issues and gaps in the implementation of tenure reform in public lands under CARP.

Evolution of tenure reform in forestlands. During Spanish colonization, the control and management of the land and natural resources were placed under State ownership. The 1894 Maura Act made it an imperative for all undocumented property rights to be transferred to the State. The US colonial government used the same notion by promoting the Regalian Doctrine. Without documented land titles, many Filipinos ended up losing their rights to land either to the State or to the elites. Among the most affected were indigenous peoples.

State ownership of all lands in the public domain was further strengthened by the 1935 and 1973 Constitutions. Commonwealth Act 141, or the Public Land Act of 1936, established the systems of classification, administration, and distribution of public lands by the State. Upland dwellers in public lands were considered squatters, and *kaingin* or shifting cultivation were blamed for forest destruction which was estimated at a rate of 200,000 hectares per year by the 1960s (Makil 1982 as cited by Pulhin, et. al, 2008).

The Forestry Reform Code of the Philippines in 1972 was among the first mechanisms to rehabilitate forests with the participation of local communities. However, the law did not provide land tenure security, and merely involved forest dwellers as cheap labor for reforestation.

The Integrated Social Forestry (ISF) Program was formed in 1982 granting local communities the right to access and cultivate upland areas, and to secure tenure for 25 years. As a program approach, the ISF sought to address ecological stability and enhance socio-economic conditions of forest occupants and communities in open and deforested upland areas, and mangrove areas.

The Letter of Instruction (LOI) 1260 of 1982 recognized the "concept of man's new role of stewardship over our natural resources" as enshrined under the 1973 Constitution;" the law provided for *kaingineros* and other forest occupants in identified *kaingin* settlements to be included under ISF, through 25-year stewardship contracts.

Although the objectives of social forestry included alleviation from poverty of forest dwellers and forest rehabilitation, its true intentions were questioned

because of its limited coverage. The total area under ISF in 1986 was only 446,156 hectares, compared to 159 timber licenses that covered a total area of 5.85 million hectares (Pulhin, et. al, 2008).

Meanwhile, there were initial efforts at tenure reform in public lands. In 1974, Presidential Decree (PD) 410 declared ancestral lands occupied and cultivated by national cultural minorities as alienable and disposable. It provided for the issuance of Land Occupancy Certificates to members of national cultural minorities, to cover family-sized farm lots not exceeding five hectares each. PD 410 was the first policy that recognized indigenous peoples' rights to public lands and forests; however, it did not provide for *collective* rights nor recognize their rights to ancestral domains.

In 1983, Proclamation No. 2282 reclassified 1.5 million hectares of the public domain in 64 provinces as A&D lands for agricultural and resettlement purposes under the government's *Kilusang Kabuhayan sa Kaunlaran* (KKK) program. However, many of the proclaimed KKK lands overlapped with ancestral domains – later triggering land conflicts between migrant-settlers and indigenous communities.

It was after the Marcos regime that tenure policies involving public lands became anchored on social justice and equity. Following the 1987 Constitution, Executive Order (EO) 192 emphasized the principle of "equitable access" in the management of the country's natural resources. EO 229 then defined the mechanisms to implement the agrarian reform program. It provided for the distribution of "lands of the public domain suitable to agriculture" subject to the "*prior* rights, homestead rights of small settlers and rights of indigenous communities to their ancestral domains.

RA 6657 (Comprehensive Agrarian Reform Law) mandated the redistribution of both private *and public* agricultural lands to landless farmers and farmworkers. Section 2 of RA 6657 further provided for "the principle of *distribution* or *stewardship*, wherever applicable, in the disposition or utilization of lands of the public domain" (emphasis supplied).

Although CARP included parts of the public lands for distribution, it was not enough to address environmental degradation in the State-held forestlands. To address this insufficiency, the earlier ISF programs and recognition of ancestral domains were integrated into the CBFM Program that was instituted in 1995 through EO 263.

The CBFM program mandates DENR in coordination with local government units and the DILG to grant participating communities with access to forestland resources under long term tenurial agreements, provided they employ environment-friendly, ecologically-sustainable, and labor-intensive harvesting methods.

CARP in public lands

Tenure reform in public lands. For CARP implementation, DENR covers all *public* lands devoted to, or suitable for agriculture. The CARP Law states that ancestral lands being inhabited by indigenous cultural communities are protected and reserved for their use, and therefore would not fall under redistribution.

Exempted from CARP are lands with a slope of more than 18 percent, and reserved lands such as national parks, forest reserves, fish sanctuaries and watersheds. Also exempted are lands used in the national/public interest such as for national defense and education and experimental farms, church and mosque sites, cemeteries and the like.

In addition to the disposition of public agricultural lands, the DENR is also mandated to undertake two other tasks: (1) support for the land acquisition and distribution by conducting surveys of public A&D lands and the verification and approval of surveys for the DAR; and, (2) provision of technical and operational support to the program (e.g., PO strengthening, agro-forestry support, income generating projects, forest area development and management, infrastructure support, and marketing information).

There are two modalities for the distribution of land under DENR:

First, public A&D lands suitable for agriculture are distributed to farmer beneficiaries through the processing and issuance of free patents and homestead patents. A *free patent* is a mode of acquiring a parcel of public A&D land suitable for agricultural purposes through the “administrative confirmation of imperfect and incomplete title,” while *homestead patent* is a mode of acquiring public A&D lands for agricultural purposes “conditioned upon actual cultivation and residence.”¹⁷ The qualifications for applying for free and homestead patents are enumerated in Table 10.

¹⁷ Other types of patents issued by DENR to dispose of public lands are Miscellaneous Sales, for disposing public A&D lands for residential purposes and Sales Patents, for disposing public A&D lands at public auction through sealed bidding.

Table 10. Qualifications for free and homestead patent applicants.

| Qualifications | Free Patent | Homestead patent |
|-----------------------------|--|--|
| Age | No age requirement <i>Note: If the applicant is a minor, he should be duly represented by his natural parents or legal guardian and has been occupying and cultivating the area applied for either by himself or his predecessors-in-interest</i> | At least 18 years, or head of family <i>Note: A married woman can apply (as per DENR Administrative Order 2002-13)</i> |
| Citizenship | Natural-born citizen of the Philippines | Citizen of the Philippines |
| Maximum area of landholding | Under the Public Land Act (CA 141) of 1936: 24 hectares Under RA 9176 (Free Patent Law) of 2002: 12 hectares | Under 1973 Constitution: 24 hectares Under 1987 Constitution: 12 hectares <i>Note: Under DENR Memorandum Circular 22 dated 20 November 1989, the titling limit was reduced to 5 hectares in line with the RA 6657, or the 1988 Comprehensive Agrarian Reform Law</i> |
| Occupation of the land | Must have occupied and cultivated the land for at least 30 years | Must have resided for at least one year within, or adjacent to the municipality where the land is located |
| Cultivation of the land | Land must be fully cultivated | At least 1/5 of the land has been cultivated within six months from the date of approval of application |

Source: DENR Land Management Bureau (DENR-LMB)

Second, non-A&D lands suitable for agro-forestry are awarded by means of 25-year stewardship agreements – through the issuance of Certificates of Stewardship Contract (CSCs) to individual families, and CBFMAs to organizations and local communities. These tenure agreements are renewable for another 25 years.

CBFM aims to provide security of tenure to forest communities in using and developing forestland and resources for 25 years. CBFM areas are lands classified as forest lands including allowable zones within the protected areas not covered by prior vested rights.

DENR in partnership with the LGU is: a) responsible for identifying potential CBFM sites; b) planning forest land uses with communities; c) endorsing and issuing CBFMAs; d) organizing and preparing CBFM communities for their CBFMAs; e) provide technical assistance and skills training for CBFM communities; and, f) monitor progress and environmental impact of CBFM activities. As for the people's organizations (POs), their roles involving CBFM communities include: a) joining DENR and LGU in making a forest land use plan and preparing a Community Resources Management Framework (CRMF) including the mission and objectives of POs; b) represent the interest of their forest communities; and, c) protect and maintain forest land entrusted to their stewardship.

Accomplishments of CARP in public lands. Table 11 shows the overall accomplishment of CARP in public lands.

Table 11. Overall DENR-CARP status of land distribution, July 1987 to December 2015.

| Activity | Revised Target Scope, 2006 (ha) | Accomplishment July 1987 to Dec 2015 (ha) | Accomplishment as % of Target Scope | No. of Beneficiary-HHs |
|------------------|---------------------------------|---|-------------------------------------|------------------------|
| Public A&D lands | 2,502,000 | 2,538,219 | 101.4 | 2,415,079* |
| ISF/CBFM areas | 1,269,411 | 1,335,999** | 105.2 | 338,381 |
| TOTAL | 3,771,411 | 3,874,218 | 102.7 | 2,753,460 |

Source: DENR, 2015

* This figure refers to the number of free patents issued, which is also used here to account for the number of beneficiary-households under the distribution of public A&D lands under CARP.

**ISF/CBFM targets were completed in CY 2000.

Issuance of land patents. From July 1987 to December 2015, a total of 2,415,079 land patents covering 2,538,222 hectares of public agricultural A&D lands were issued by DENR, with an *average* of 1.05 hectares granted to each beneficiary-family. This represents a 101 percent accomplishment of the scope of 2.5 million hectares.

The high accomplishment rates reflect the given nature of the program. The distribution of A&D lands is based on *vested* rights (i.e., 30 years of continuous residency and cultivation in the case of free patents), there is no landlord resistance or agrarian disputes as in private lands, and land is generally awarded for free (no land valuation). Under CARP, beneficiaries were also exempted from the payment of fees in the issuance of titles and patents. On the other hand, the bottlenecks cited in implementation are mainly administrative – i.e., delays in undertaking land surveys, slow reconstitution of land records, and sluggish resolution of land conflicts among competing claimants.

Issuance of ISF/CBFM arrangements. Under ISF/CBFM agreements, families and communities in forestlands are granted usufruct rights to a maximum of seven (7) hectares per family for 25 years, renewable for another 25 years, in exchange for forest protection and sustainable use. From 1983-1998, the beneficiaries of ISF were granted individual Certificates of Stewardship Contract (CSCs) per family. But with the program shift towards CBFM in 1998, groups and communities were awarded CBFM Agreements which granted them *collective* tenure rights. This group tenure approach greatly facilitated the expansion of the program.

For forestlands, DENR reported that the ISF/CBFM program *under CARP* was officially completed as early as December 2000. The ISF/CBFM program achieved 105 percent of the revised 1994 target scope. Table 12 shows that some 338,381 beneficiary-families had reportedly issued stewardship contracts (leases or usufruct rights) to 1,335,999 hectares of agro-forestry area for an average of 3.9 hectares per household.

Table 12 below shows the breakdown of respective accomplishments in terms of ISF and CBFM. It also shows that the reported DENR-CARP accomplishments include 293,365 hectares that were covered even *prior to the institution of CARP*. These are areas covered from 1983-1986 through the issuance of Certificates of Community Forest Stewardship (CCFS) and CSC. It should be noted that the ISF program was instituted as early as 1982.

Table 12. Summary DENR-CARP accomplishments in ISF/CBFM, 1988-2000.

| REGION | Prior to RA 6657 | | RA 6657 | | | | GRAND TOTAL | |
|--------------|-------------------------|-------------------|------------------------|----------------|----------------------|----------------|----------------|------------------|
| | CCFS/CSC (1983-1986) | | ISF/CSC (1987-1998) | | CBFMA (1998-2000) | | | |
| | No. | Area (ha) | No. | Area (ha) | No. | Area (ha) | No. | Area (ha) |
| CAR | | | 12,949 | 27,485 | 24 | 8,700 | 12,973 | 36,185 |
| I | | | 14,621 | 17,716 | 40 | 6,607 | 14,661 | 24,323 |
| II | | | 30,807 | 67,818 | 17 | 30,047 | 30,824 | 97,865 |
| III | | | 21,454 | 25,796 | 39 | 6,059 | 21,493 | 31,855 |
| IV | | | 34,553 | 81,086 | 41 | 28,670 | 34,594 | 109,756 |
| V | | | 16,299 | 33,699 | 33 | 20,910 | 16,332 | 54,609 |
| VI | | | 17,822 | 43,851 | 53 | 23,999 | 17,875 | 67,850 |
| VII | | | 23,499 | 31,301 | 33 | 10,288 | 23,532 | 41,589 |
| VIII | | | 18,626 | 36,076 | 33 | 45,256 | 18,659 | 81,332 |
| IX | | | 46,274 | 92,687 | 67 | 20,959 | 46,341 | 113,646 |
| X | | | 37,424 | 84,423 | 70 | 18,813 | 37,494 | 103,236 |
| XI | | | 41,668 | 119,226 | 25 | 20,067 | 41,693 | 139,293 |
| XII | | | 17,790 | 54,959 | 25 | 34,579 | 17,815 | 89,538 |
| XIII | | | 4,495 | 10,027 | 27 | 41,528 | 4,522 | 51,555 |
| TOTAL | 0 | 293,364.71 | 338,281 | 726,152 | 527 | 316,483 | 338,808 | 1,336,000 |

DENR (2016a). Physical accomplishment report (1983-2000): CSC/CBFMA issuances.

It should be noted that, even after the *official completion* of the ISF/CBFM program *under CARP* in CY 2000, the CBFM program continued under the DENR. As of 2016, a total of 1,884 CBFMAs had been issued to 1,884 people's organizations (POs) throughout the country, covering a tenured area of 1,615,518 hectares.

These POs collectively have 191,356 registered members – 124,306 males and 67,050 females (DENR, 2016b).

This also means that around 280,000 hectares under CBFMA lie beyond the scope of CARP or have not been included in reporting for CARP. Thus, while CARP sets a ceiling of five hectares per family under ISF/CBFM leasehold, the average size of CBFM awards per member as computed from the latest 2016 data is 8.4 hectares.

Assessment

It should be noted that the legal instruments for DENR's tenure-related programs pre-existed CARP in 1988. The Public Land Act of 1936 (CA 141) provided for the administrative distribution of A&D lands, while the ISF Program on forestlands was instituted in 1982. The inclusion of these programs under CARP made them a national priority, with a stronger focus on equitable distribution, tenure rights and security for the poor. CARP provided for program budgets, accomplishment targets and monitoring systems, and inter-agency coordination under the Presidential Agrarian Reform Council (PARC).

Lack of impact studies. To date, there has been no program-wide impact assessment of DENR-CARP work and accomplishments. Existing assessments of the CBFM program often focus on environmental impact and resource management, rather than on tenure security, welfare and livelihoods of forest dwellers. Several case studies on CBFM implementation cite that the lack of support services to the farmer-beneficiaries of public lands as one of its most common problems.

Low CARP targets? There are reasons to believe that DENR's CARP targets were set too low, and that there is much greater scope for further improving tenure security in public lands. *One:* The ISF/CBFM targets were reportedly completed as early as CY 2000. *Two:* Vast tracts of public land (755,000 hectares) remain unclassified, based on the 2016 Philippine Forestry Statistics, and the delineation of forestlands is still incomplete. *Three:* The DENR programs – on the issuance of land patents, and on CBFM – have continued long after "CARP completion" in 2000. However, the focus of these programs may have shifted. And in the absence of a CARP program framework in public lands, there is a danger of tenure reforms being ignored by the bureaucracy.

Issuance of land patents – land to the claimant? Based on DENR’s reported CARP accomplishments, some 2,753,460 families have directly benefitted from the redistribution of public lands (through patents and leaseholds) between July 1987 and December 2015. However, the quality of DENR’s work has not been assessed. For DENR employees, the underlying principle in titling may not be *land to the tiller* but *land to the claimant*, even if he/she is neither a resident in the area or an actual tiller. With the reported completion of DENR’s work under CARP, DENR is likely to return to its administrative role of processing claims and applications, with less concerns for equity considerations. Under RA 9176, the filing of land patent applications is extended to CY 2020.

Need to assess household-level impacts of group tenure arrangements, such as CBFM. Under CBFM, agreements are forged with POs and there is the danger that the privileges and benefits are captured by the leaders or local elite especially in the absence of regular monitoring. Furthermore, many of the current 1,884 POs with CBFMAs were created solely for the scheme. According to a 2016 GIZ study, “... many (POs) do not have leadership and management capabilities and disintegrate after some time. Some POs provide benefits only to the leaders and include only part (20 to 30 percent) of the community.”

Moratorium on new tenure agreements on forestland. The 2013 DENR moratorium on the renewal or issuance of tenure agreements on forestland has left many forest dwelling households and communities without legal tenure. Half of the approximately 500,000 individual CSCs have expired, although the DENR reportedly plans to renew them through group tenure arrangements under CBFM. Meanwhile, for CBFMA holders, there is an approaching need to apply for renewal of their 25-year leases, as CARP was instituted in 1988. Who decides which CBFM areas would continue? What happens to those whose CBFM agreements have ended?

Overlapping tenure instruments and management schemes. On average, a CBFMA covers 858 hectares and 102 families. As such, CBFMAs cover relatively smaller parcels within larger tenure and management regimes, which include ancestral domains, national parks and protected areas, mineral lands, timber and forest concessions, and lands managed through local governments. Moreover, CBFMAs and CSCs are just two among the many tenure instruments that DENR issues over forestlands and other public lands. In many instances, there are overlapping tenure instruments and management schemes, and these affect especially indigenous peoples, as when CBFMAs are issued to settlers within areas under ancestral domain claims. On occasion, resource-use conflicts contribute

to weak compliance, a deadlock of socioeconomic activities, and eruptions of violence.

The fact that CBFMAs continue to be issued within ancestral domains of indigenous peoples seem to indicate that the CBFMA is seen more as a resource management measure than as a tenure instrument. For instance, DENR AO No. 96-29 provides for the issuance of CADC-CBFMAs on lands under ancestral domain claim and CALC-CBFMAs on lands under ancestral land claim, provided they opt to participate.¹⁸ Oftentimes, indigenous communities are required to have permits, or CBFMAs, in order to utilize the resources within their own ancestral domains that are already under CADT.

Recommendations

- **Conduct a program-wide impact assessment of the implementation of CARP in public lands.** There is need to study and review whether and to what extent individual families under group tenure systems such as CBFM are able to exercise and enjoy their full rights of tenure. Under CBFM, agreements are forged with POs, communities and even local governments. There is always the danger that privileges and benefits are captured by the leaders or local elite, especially in the absence of regular monitoring. Thus a key question for study is whether the improved tenure actually leads to improvements in family livelihoods.
- **DENR to complete the inventory of all forest-dwellers, along with their tenure status.** Also, conduct an inventory of all remaining lands in the public domain (outside of ancestral domains and claims) that are suitable for agriculture and can be redistributed under agrarian reform.
- **Address the issue of future tenure security for ISF/CBFMA holders** whose 25-year leases have expired and have not been renewed. Who decides which CBFM areas would continue? What would happen to those whose agreements are ended, particularly in relation to the tenure security and livelihoods of forest dwellers? What compensation would be given to them?
- **For government and civil society to ensure the participation of organizational representatives on non-IP forest dwellers** in decision-making bodies, as well as in dialogues, fora, and discussions. ■

¹⁸ DENR AO 96-29 is entitled "Rules and Regulations for the Implementation of Executive Order 263, otherwise known as the Community-Based Forest Management Strategy (CBFMS)."

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Manobo children getting ready for a harvest ritual.
Photo by Dave de Vera