

Status of tenure reform in public lands under the Comprehensive Agrarian Reform Program

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The Philippines covers a land area of approximately 30 million hectares generally classified into two major categories: *alienable and disposable lands (A&D)*, and *forestlands (non-A&D)* which is also commonly referred to as the public domain.

Alienable and disposable (A&D) lands refer to those areas which may be issued with permanent title and/or used for varying purposes such as for residential, agricultural, commercial and other uses. These A&D lands cover an estimated 14.2 million hectares.

On the other hand, the remaining 15.8 million hectares is classified as forestland (non-A&D) which are lands deemed as belonging to the state or community, and cannot be alienated unless provided for by law.

It should be noted that as in other Asian countries, the term “forestland” in the Philippine context refers to all property owned (or claimed) by the state based on the official system of land classification. It is a legal and tenorial status, not a botanical

description, as in reality much “forestland” may not contain forests or trees.

The primary government agency managing forestlands is the Department of Environment and Natural Resources (DENR). As of 2015, about 53 percent of the country’s total land area are claimed as state-owned forestlands (FMB-DENR, 2015), thus making DENR responsible for the management for over half of the country’s total land area.

In addition to these forestlands, there are certified A&D lands that still remain under the direct management of the DENR, although their exact figures are unavailable.

Roughly 20 to 30 percent of the population live in classified forestlands, including indigenous

peoples, many of whom are without security of tenure. An estimated 17 to 22 million people who depend on forests for their homes and livelihoods have no legal tenure rights over forestlands (Fortenbacher and Alave, 2014).

Although various government initiatives have been developed to secure tenure over forestlands, poverty prevails over communities residing in those areas. Studies conducted on behalf of GIZ show that upland settlers having an average household size of 4.7 people only acquires between PhP23 and PhP52 per person, which is below the World Bank-defined poverty line of 1.25 US\$ a day (Fortenbacher and Alave, 2014). In addition to this, FAO and DENR data puts the annual deforestation rate at about 100,000 hectares in 2014, further contributing to the marginalization of the forest dwellers (as cited by Fortenbacher and Alave, 2014).

Tenure over forestlands can mean sustenance for the poor as well as protection of natural



resources. It is in this context that this study aims to review the implementation of agrarian and tenure reform involving public lands as provided for under the Comprehensive Agrarian Reform Program (CARP).

This report provides a brief summary of the evolution of tenure reforms in the management and disposition of public lands, reviews the role of DENR in implementing CARP, describes DENR's accomplishments on tenure reform, and identifies some issues emerging from DENR's implementation of tenure reform.

This report is based mainly on secondary data gathered from DENR and other sources, as well

as on discussions with DENR and some civil society organizations working on land issues.

Public lands and the evolution of its management: A brief historical narrative of Philippine tenure reform in forestlands¹

Prior to the colonization of the Philippines, land was considered a communal property. Rather than ownership, people had the right to access land for cultivation. It was during the Spanish colonization that through various royal decrees, the control and management of the land and

natural resources were placed on the hands of the state. In 1894, the Maura Act institutionalized this foreign notion of state ownership by making it an imperative for undocumented property rights to be transferred to the state. The US colonial government used the same notion by promoting the Regalian Doctrine. Documented land title being a foreign idea, Filipinos ended up losing their rights to land either to the state or to the elites. Among those 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, known as the Public Land Act of 1936,

¹ Some of this historical narrative is based on: Pulhin, J., Dizon, J., Cruz, R. V., Gevana, D., & Dahal, G. (2008). *Tenure Reform on Philippine Forest Lands: Assessment of Socio-economic and Environmental Impacts*. Los Banos, Laguna, Philippines: College of Forestry and Natural Resources.

established the systems of classification, administration and distribution of public lands by the state.

Meanwhile, local communities, especially upland dwellers in public lands were largely considered squatters in their own homes. They remained unable to access lands and forest resources. Those practicing *kaingin* or shifting cultivation were further blamed for forest destruction which was estimated at a rate of 200,000 hectares per year by the year 1960s (Makil 1982 as cited by Pulhin, et. al, 2008). The Forestry Reform Code of the Philippines in 1972 carried out by the Bureau of Forest Development (BFD) was among the first mechanisms to rehabilitate forests with the participation of local communities. However, most mechanisms did not provide land tenure security, and forest dwellers were rather seen as cheap labor for reforestation. The Integrated Social Forestry Program (ISFP) was formed in 1982 granting local communities the right to access and cultivate upland areas, and 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.

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 ISFP, 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 ISFP during 1986 was only 446,156 hectares, while 159 timber licenses covered a total area of 5.85 million hectares (Pulhin, et. al, 2008). Recovering from deforestation cannot be done with this meager effort whilst continuing massive logging activities.

Meanwhile, there were some initial efforts at tenure reform in public lands. In 1974, Presidential Decree 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.² PD 410 was the first policy that recognized indigenous peoples’ (IP) rights to public lands and forests; however, it did not provide for *collective*

rights nor recognize their rights to ancestral domains.

It was during the transition from Marcos regime to the Aquino administration that tenure policies involving public lands became anchored on social justice and equity. After the EDSA people power revolution in 1986, Executive Order (EO) 192 was promulgated mandating the Department of Environment and Natural Resources (DENR) as the primary government agency responsible for the conservation, management, development and proper use of the country’s environment and natural resources, specifically forest and grazing lands, mineral resources, including those in reservation and watershed areas, and lands of the public domain. At that time, DENR’s tasks already included the distribution of A&D public lands through patents, and the issuance of leasehold agreements as decreed by the Public Land Act of 1936. However, EO 192 emphasized the principle of “equitable access” in the management of the country’s natural resources – as part of state policy and in accordance with the 1987 Constitution.

In 1987, EO 228 was promulgated providing qualified farmer beneficiaries the right to acquire land ownership. Subsequently, EO 229 provided the mechanics to implement the comprehensive agrarian reform program, to include public lands. Section 15 of EO 229 provided for the

² Presidential Decree No. 410 dated March 11, 1974: “Declaring ancestral lands occupied and cultivated by national cultural minorities as alienable and disposable, and for other purposes”.

distribution of public A & D lands under DENR, while Section 18 recognized the rights of settlers and of indigenous communities in public lands.³ These two decrees provided the framework for the passage of RA 6657 (Comprehensive Agrarian Reform Program, or CARP) that 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 Community-Based Forest Management (CBFM) Program that was instituted in 1995 through EO 263 (Fortenbacher and Alave, 2014). The CBFM program mandates DENR through its Community and Provincial Environment and Natural Resource Offices, in coordination

³ Section 15 of EO 229 states: “*Distribution and Utilization of Public Lands*. — All alienable and disposable lands of the public domain for agriculture and outside proclaimed settlements shall be distributed by the Department of Environment and Natural Resources (DENR) to qualified beneficiaries as certified to jointly by the Department of Agrarian Reform (DAR) and the DENR. Section 18 of EO 229 further states: “In lands of the public domain, the CARP shall respect prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.”

with local government units and the Department of Interior and Local Government (DILG) to grant participating communities access to forestland resources under long term tenurial agreements, provided they employ environment-friendly, ecologically-sustainable, and labor-intensive harvesting methods.

Other major tenure reforms involving public lands were legislated following the new Philippine Constitution of 1987, and the institution of CARP in 1988. The Indigenous Peoples Rights Act of 1997 (IPRA/RA 8371) recognizes four substantive rights of indigenous peoples: (i) the right to ancestral domains and lands, (ii) the right to self-governance, (iii) the right to cultural integrity, and (iv) social justice and human rights.⁴ Meanwhile, the Fisheries Code of 1998 (RA 8550) covers rights of artisanal fisherfolk to foreshore areas, inland and municipal waters.

Role of DENR in CARP implementation

Instituted in 1988, the Comprehensive Agrarian Reform Program seeks to redistribute some 9 million hectares to 6 million landless farmers and

⁴ Under the Indigenous Peoples Rights Act of 1997, the definition of ancestral domains covers forests, pastures, residential and agricultural lands, hunting grounds, worship and burial areas, and includes lands no longer occupied exclusively by indigenous cultural communities, but to which they had traditional access, particularly the home ranges of indigenous cultural communities who are still nomadic or shifting cultivators.

farmworkers.⁵ It covers all public and private agricultural lands devoted to or suitable for agriculture. The 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 among others, are all lands with a slope of more than 18%, as well as reserved lands such as national parks, forest reserves, fish sanctuaries and watersheds. Also exempted are lands used in the national or public interest such as for national defense and education and experimental farms, church and mosque sites, cemeteries and the like.⁶

For CARP implementation, all private and government-owned lands are distributed under the Department of Agrarian Reform (DAR). Meanwhile, lands classified as alienable and disposable (A&D) in the public domain, as well as non-A&D lands in reserved forestlands lie within the jurisdiction of the DENR.

Under CARP, the DENR is mandated to undertake three general tasks: (1) land disposition of public agricultural lands; (2) support for the land acquisition and distribution process by conducting surveys of public A&D lands and the inspection, verification and approval of

⁵ The Comprehensive Agrarian Reform Program (CARP) was instituted in 1987 through RA 6657. In 2009, the law was amended through RA 9700.

⁶ Sec 4 on Scope, and Sec 10 on Exemptions and Exclusions, Republic Act No. 6657.

Table 1. Qualifications for free and homestead patent applicants

Qualifications	Free Patent	Homestead patent
Age	No age requirement <i>Note:</i> 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	At least 18 years, or head of family <i>Note:</i> A married woman can apply (as per DENR Administrative Order 2002-13)
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:</i> Under DENR Memorandum Circular 22 dated Nov. 20, 1989, the titling limit was reduced to 5 hectares in line with the RA 6657, or the 1988 Comprehensive Agrarian Reform Law
Occupation of the land	Must have occupied and cultivated the land for at least 30 years	Must have resided for at least 1 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 6 months from the date of approval of application

Source: DENR Land Management Bureau (DENR-LMB)

surveys for the Department of Agrarian Reform; and, (3) provision of technical/operational support to the program. These three major tasks are described below:

1. Land distribution

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. According to the website of the Land Management Bureau, 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.” The qualifications for applying for free and homestead patents are enumerated in Table 1.

The Provincial Environment and Natural Resources Officer (PENRO), Regional Executive of the DENR (RED) and the DENR Secretary is authorized to sign and approve free and homestead patents for lands not more than 5 hectares, lands more than 5 hectares up to 10 hectares, and lands more than 10 hectares, respectively.

Other patents issued by DENR to dispose of public lands are *Miscellaneous Sales*⁷, for

⁷ The enactment of Republic Act 10023 or the New Residential Free Patent Act on 09 March 2010 authorizes the issuance of Residential Free Patents in lieu of Miscellaneous Sales on residential lands that are zoned as residential areas, including town sites as defined under the Public Land Act.

disposing public A&D lands for residential purposes and Sales Patents, for disposing public A&D lands at public auction through sealed bidding.

Second, DENR also allocates portions of forestlands suitable for agro-forestry by means of stewardship – through the issuance of Certificates of Stewardship Contract (CSCs) to individual families, and Community-Based Forest Management Agreements (CBFMAs) to organizations and local communities.

CBFM aims to promote sustainable management of forest resources, provide social justice to and improve well-being of local communities, and foster strong partnership among local communities and

the DENR. It provides 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. The principal participants of this program are local communities including indigenous peoples represented by their People's Organization (PO) and traditional tribal councils whose members are: (1) actually tilling portions of the area to be awarded, or (2) traditionally using the resource for all substantial portion for their livelihood, or (3) residing in or adjacent to the areas to be awarded. DENR in partnership with the local government unit (LGU) is responsible for identifying potential CBFM sites, planning forest land uses with communities, endorsing and issuing CBFMAs, organizing and preparing CBFM communities for their CBFMAs, provide technical assistance and skills training for CBFM communities, and monitor progress and environmental impact of CBFM activities. As for the POs, their roles involving CBFM communities include joining DENR and LGU in making a forest land use plan and prepare a Community Resources Management Framework (CRMF) including the mission and objectives of POs, represent the interest of their forest communities, and protect and maintain forest land entrusted to their stewardship.

2. Support activities to land acquisition and distribution

In addition to distribution of public agricultural lands and allocation of forest lands for CBFMs, DENR also provides support to land acquisition and distribution by conducting surveys of public A&D lands and non-A&D lands. As indicated in the DENR-CARP 20-Year Report (1987-2007), DENR conducted the following activities:

- Survey of public A&D lands
 - Cadastral surveys
 - Isolated or public land survey
- Survey of private agricultural lands (1987-1993)⁸
 - Rice and corn lands
 - Voluntary offer to sell (VOS) lands, idle and abandoned lands
 - Lands with total area of 5.01-24.0 hectares, 24.01-50 hectares and lands in excess of 50 hectares
- Survey of Government-owned lands (1987-1993)⁹
- Survey of forest areas under the CBFM program
 - Perimeter and parcellary survey)
- Inspection, verification and approval of surveys (IVAS) of

⁸ DENR conducted and funded this activity under CARP Fund from CY 1987 to 1993. The survey of private agricultural lands was transferred to DAR in 1993 following a Resolution of the Executive Committee of the Presidential Agrarian Reform Council (PARC).

⁹ DENR conducted and funded this activity under CARP fund from CY 1990 to 1993. Similar to the case of private lands, this task surveying government-owned lands was likewise transferred to DAR following a PARC Executive Committee Resolution.

private lands surveyed by the DAR

- Inventory of forest occupants
- Inventory of A&D lands
- Reconstitution of survey records
- Information and Education Campaign (IEC)

3. Technical and operational support

Lastly, DENR also provides technical and operation support services including staff development, infrastructure support, extension services, community organization, training for upland farmers, program beneficiary development (PBD), and development of CBFM-CARP areas.

Accomplishments of DENR under CARP

LAND DISTRIBUTION

Changes in target scope. At the onset of CARP in 1988, it was estimated that the whole program would cover some 10.3 million hectares of which approximately two-thirds are public A&D lands as well as forested lands under DENR (LBRMO, 2014). However, these initial target figures were based largely on estimates, given the poor state of land records in 1988.

The original CARP target was scaled down to 8.2 million hectares after the 1993 "cleansing of data". Then in 2006, DAR conducted an inventory of CARP scope (ICS) to determine the

actual CARP scope balance. This led to another revision of CARP scope to 9 million hectares (see Table 2 below).

On the part of DENR, the original target scope for public A&D lands was reduced from 4.6 million hectares in 1988, to 2.5 million hectares in 1994, following the completed inventory of public lands earlier classified as "A&D" lands. This reduction was due to: the inventory of lands covered by previous Presidential Proclamations for use of the government, proclamations for DAR resettlement areas including KKK areas already transferred to DAR under EO 407, judicially-titled lands from 1987 to 1994 based on records of the Land Registration Authority, and unclassified lands

earlier projected to be released as A&D but released as forestlands, which cover 2 million hectares.

For *ISF/CBFM areas*, the original target scope of 1.88 million hectares in 1989 was reduced to 1.27 million hectares in 1994, after the verification of data.

Under the revised CARP scope in 2006, there were no changes in the DENR-CARP target scope.

Accomplishments. 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, representing an *average* of 1.05 hectares granted to each beneficiary-family. This also represents a 101%

accomplishment of the revised scope of 2.5 million hectares.

Geographically, Regions I and III (Ilocos and Central Luzon) have the lowest percentage of accomplishment with only 68% and 66% respectively. On the other hand, Regions II, VIII, IX, X, XII, XIII and CAR have exceeded their target scope in distributing public A&D lands.

On average, it was during Estrada administration (1998-2000) that distribution of public agricultural A&D lands was lowest, accomplishing only 36% of its set target. The highest percentage of accomplishment was during the Arroyo administration (2001-2010) with 94%.

Table 2. CARP Scope, Original vs Revised Scope, by Agency and by Land Type

Agency/ Land Type	Original Scope (1988)	Revised Scope (1994)	Revised Scope (2006)
DAR			
Private Agricultural Lands (ha)	3,267,600	3,093,251	3,353,784
Non-Private Agricultural Lands (ha)	553,000	1,335,106	1,809,967
DAR Sub-Total (Area/ha)	3,820,600	4,428,357	5,163,751
(Beneficiaries)	1,553,610	2,604,916	3,017,254
DENR			
Public Alienable and Disposable Lands (ha)	4,595,000	2,502,000	2,502,000
ISF/CBFM Areas (ha)	1,880,000	1,269,411	1,269,411*
DENR Sub-Total (Area in ha)	6,475,000	3,771,411	3,771,411
(Beneficiaries)**	2,347,667	---	---
TOTAL CARP			
Area in ha	10,295,000	8,199,768	9,001,750
Beneficiaries	3,901,277	---	---

Source: Presidential Agrarian Reform Council (2008). CARP at 20: A Performance Report, June 2009.

Notes:

*In the PARC Secretariat report of 2009, this figure is listed differently as "1,335,999". However, the PARC report explains that the 2006 DENR target was adjusted simply to account for the *additional 66,588 hectares accomplished in excess of its target* as of CY 2000. This means that there was *no actual change in DENR program targets for in 2006*, as reflected in this revised Table 2. (authors)

** The number of target beneficiaries in 1995 for ISF/CBFM areas was not indicated.

Overall, the high accomplishment rates reflect the 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). The bottlenecks in implementation, however, usually involved delays in undertaking land surveys, slow reconstitution of land records, and sluggish resolution of land conflicts among competing claimants.¹⁰

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 renewable use. Until 1998, the beneficiaries of Integrated Social Forestry (ISF) were granted individual Certificates of Stewardship Contract (CSCs) per family. But with the program shift towards CBFM in 1998, groups and communities were granted CBFM Agreements which granted them *collective* tenure rights. This group tenure approach greatly facilitated the implementation of the program.

Table 3. Overall DENR-CARP Status of Land Distribution, July 1987 to Dec 2015

Activity	Revised Target Scope, 2006 (ha)	Accomplishment July 1987 to Dec 2015 (ha)	Accomplishment as % of Target Scope	No. of Beneficiaries
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, 2015b

* This figure actually 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.

For forestlands, DENR reported that the ISF/CBFM program *under CARP* was officially completed by December 2000.¹¹ The ISF/CBFM program achieved 105% of the target scope that was established in 1994. As of end-year of 2000, some 338,381 beneficiaries were 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.

However, a closer examination of the data available also shows that, included in the reported DENR-CARP accomplishments are 293,365 hectares that were accomplished even *prior to the promulgation of RA 6657*, or the CARP Law in 1988, and EO 229 in 1987. These are landholdings covered from 1983-1986 through the issuance of Certificates of Community Forest Stewardship (CCFS) and Certificates of Stewardship Contract (CSC).

Again, it may be noted here that the legal tenure instruments for

Integrated Social Forestry had been instituted in the Philippines as early as 1982.

SUPPORT TO LAND ACQUISITION AND DISTRIBUTION (LAD)

From 1983-2015, DENR conducted land surveys in support to the LAD component of CARP (refer to Table 4). It has to be noted that the conduct of surveys involving private agricultural lands and government-owned lands was undertaken by DENR until 1993, after which it was transferred to DAR following a PARC Executive Committee resolution. After 2000, cadastral land surveys were conducted by the local government units (LGUs).

As shown in Table 4 (next page), in terms of public land surveys, DENR has completed 608,043 lots covering 1,096,634 hectares as of end-2015. Public land surveys are conducted for securing patents, leases and permits. According to the DENR accomplishment report for 2015, the total land area of public A&D lands distributed through free patents is 2,538,222 hectares. DENR on average has been able to survey 57,717

¹⁰ Email communications with the DENR-CARP National Coordinating Office, 15 June 2016.

¹¹ It should be noted that, even after the *official completion* of the ISF/CBFM program *under CARP* in CY 2000, the ISF/CBFM program itself continues to be implemented by the DENR until the time of this writing.

Table 4. Summary of DENR support activities to Land Acquisition and Distribution (LAD) under CARP, as of end-2015

Activity	No of Lots	Area (in ha)
Private agricultural lands (1987-1993)	542,533	722,220
Government owned lands (1990-1993)	138,764	300,221
Cadastral survey (1988-2000)	1,448,142	2,726,452
Public land survey (1996-2015)	608,043	1,096,634
Inspection, verification and approval of land surveys conducted by DAR (1992-2015)	6,192,620	7,486,135
Parcellary survey (under CBFM program)	-	1,101,502
Perimeter survey (under CBFM program)	-	263,772

Source: (DENR, 2015a)

hectares of public land yearly from 1996 to 2015. The conduct of the Public Land Survey in CY 1996 to 2015 that was funded under the Agrarian Reform Fund was mainly to subdivide the large cadastral lot or to subdivide the big landholdings in order to generate patentable areas.

The inspection, verification and approval of land surveys conducted by DAR (IVAS) is a DENR service in support of the land distribution program of DAR. It is a survey of lands subsequently issued with CLOAs.

As of December 2015, DAR has distributed a total of 4.718 million hectares of land to 2.783 million agrarian reform beneficiaries (ARBs) through emancipation patents (EPs) and certificates of land ownership awards (CLOAs). From this, DENR has been able to identify a total of 14,835 lots or 16,356 hectares of land surveys for correction, 1,159 lots or 1,455 hectares of land surveys for rejection and had verified and approved a total of 55,853 lots

or 88,250 hectares. Region IX has the largest scope of land survey for correction with a total of 1,797 lots or 3,003 hectares. Following region IX are regions VI and V with 2,966 and 2,865 hectares of land survey with corrections. Only regions III, IVB, XII and XIII have rejected land surveys with region XII having the largest scope of 1,034 hectares of surveyed land. However region XII also has the third largest scope in terms of verified and approved land survey with 17,437 hectares.

TECHNICAL AND OPERATIONAL SUPPORT

Studies on CBFM implementation often cite that the lack of support services to the farmer-beneficiaries of public lands as one of its most common problems. In a 2009 case study on selected CBFM areas conducted by DAR, it was found that support services to farmer-beneficiaries in these areas are not provided because the lands given to them become "private property" once it is awarded to them. Even monitoring of the

farmer-beneficiaries in public A&D lands after the award are not conducted. As indicated in DENR CARP 20-Year Report, support services were provided in 110 CBFM sites (average of 7 CBFM-CARP sites/region) all over the country by the Department in 2000-2002. This includes PO strengthening and capacity building activities such as income generating projects (e. g. livestock raising), financial management training, livelihood enterprise development, forest area development and management, infrastructure development, and marketing information system to mention a few. In 2007 and 2008, a budget allotment of PhP30 million per year was allocated under the Agrarian Reform Fund to the DENR to provide support services to an additional 65 CBFM-CARP areas (DAR, 2009). In support of hunger mitigation and upland development, 762 hectares of agroforestry farms were developed in 2007, involving 8,393 beneficiaries within 35 project sites (DAR, 2009). In 2008, 1,585 hectares of agroforestry farms involving 5,238 beneficiaries were developed in another 30 project sites (DAR, 2009).

Assessment and areas for further study

Public lands are an important resource in reducing rural poverty and in mitigating the impacts of poverty by providing livelihood to the poor. Through CARP, farmers and forest dwellers

are enabled to acquire tenure security over public lands, either through the issuance of land patents in A&D lands, or through 25-year lease agreements in non-A&D forestlands. This is significant in a country where an estimated 20-30 percent of the population live in public lands, and depend on it for their livelihoods.

And 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 to December 2015.

The institution of CARP in 1988 provided the impetus for the expansion of tenure reform into public lands. It should be noted that the legal instruments for DENR's tenure-related programs already existed prior to CARP in 1988. The Public Land Act of 1936 (CA 141) provided for the administrative distribution of A&D lands, while the Integrated Social Forestry Program on forestlands was instituted as early as 1982. However, 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. It also involved the allocation of program budgets, setting up pro-active accomplishment targets and monitoring systems, and undertaking inter-agency coordination under the Presidential Agrarian Reform Committee (PARC).

For the issuance of land patents, the Public Land Act of 1936 had to be amended in 2002 through Republic Act 9176, in order to extend the period for administrative filing of patent applications until 31 December 2020.¹² Under CARP, agrarian reform beneficiaries (ARBs) were also exempted from the payment of fees in the issuance of titles and patents. Moreover, the distribution of A&D lands became pro-active, with established accomplishment targets, unlike earlier when the role of DENR was merely administrative by processing claims and applications.

However, there is a need to clarify the DENR's targets and accomplishment in relation to distribution of public agricultural A&D lands. There is a reported accomplishment rate of 101% for A&D lands; however, the land classification data seems to show that there is a much greater scope than the earlier established targets, and that the CARP targets were set too low.

- The land classification system of the country shows that vast tracts of lands remain unclassified. Based on the *Philippine Forestry Statistics* of 2015, some 755,009 hectares of the public domain remain "unclassified".
- The DENR accomplishment report on the distribution of

¹² Section 45 of Commonwealth Act 141 set 31 December 1976 as the original deadline for the administrative filing of patent applications. This was amended by Republic Act 9176 which extended the deadline to 31 December 2020.

A&D lands shows that, despite a 101% accomplishment rate, there is a remaining "balance" of 36,219 hectares still to be covered. This raises a question about how much classified A&D lands still remains under the management of DENR.

Similarly, there is a need to clarify the DENR's accomplishment in relation to the allocation of forestlands for ISF/CBFMs, and whether the targets were set too low. For ISF/CBFM lands under CARP, DENR reported its early completion in CY 2000, with an accomplishment of 1,335,999 hectares, or 105% accomplishment rate of its CARP target. Included in the reported DENR-CARP accomplishment report are 293,365 hectares that were completed even *prior to the promulgation of EO 229 in 1987 and RA 6657 in 1988*. Also, even after CY 2000, DENR continued to expand and implement its CBFM program.

Thus, the *Philippine Forestry Statistics* of 2015 shows that a total of 1,615,598 hectares of forestland are under CBFM Agreements as of December 2015. This means that around 280,000 hectares under CBFMAs lie outside the scope of CARP, or have not been included in the reporting for CARP. Another indication that these lands no longer fall under the CARP program is the average size of leased lands per family. While CARP sets a ceiling of 5 hectares per family under ISF/CBFM leasehold, the average size

of CBFM awards per member (or per family) as computed from data is 8.4 hectares.

Is CBFMA therefore seen as a tenure instrument, or is it now considered more as a conservation program? Case studies on the impact of CBFM have found that DENR has benefitted from the program by relying on the CSC/CBFMA holders to improve the forest condition in the Philippines (Carig, 2012; Pulhin et al, 2008). But while CBFM may have improved the state of environmental protection, in what way have the lives, tenure security and livelihoods of forest dwellers been improved? In the three study areas of DAR's case study in 2009 on CBFMAs, the prominent problem found was the lack of support services for farmer beneficiaries. It also found the lack of monitoring of DENR on the implementation of CBFM-CARP projects.

Also, the fact that CBFMAs are issued within ancestral domains of indigenous peoples seem to indicate that CBFM might now be seen more as a conservation measure than as a tenure instrument. For instance, DENR Administrative Order (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.¹³ This raises a question of which is the more appropriate

¹³ 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)".

as a tenurial instrument – a Certificate of Ancestral Domain Claim, or a CBFMA?

Further, 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 people's organizations, 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.

Finally, there are several areas that need further study:

First is the issue of conflict and overlapping tenure instruments and management schemes, especially on lands of indigenous peoples. 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, CBFM and CSC are just two among the many tenure instruments that cover forestlands and other public lands. In many instances, overlapping tenure instruments and management schemes

affect 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 armed violence. There are a number of written cases of this, and this matter needs further study.¹⁴

Second is the issue of reforming untitled public agricultural lands (UPAL). UPAL lands are untitled public lands under private use or occupation, which are often leased out by "landowners" to their tenants. But because they involved public lands, they cannot be redistributed by DAR. Neither can the land be legally titled or awarded by DENR, as it is under a prior claim yet the claimant refuses or else ignores the filing for a land patent in the case of A&D lands. The result is that the land in question remains in limbo. Although policies have been instituted by both DAR and DENR on this matter, the issue persists.¹⁵ There are no exact figures on the extent of UPAL

¹⁴ See De Vera, David and Zingapan, Raquel. *Task Force Cumadun: Collaborative Planning for an Ancestral Domain*. International Centre for Research in Agroforestry (ICRAF). The paper discusses the issues faced by the Agtulawon-Mintapod Higa-onon Cumadun (AGMIHICU), an association of indigenous Higa-onons, in implementing an Ancestral Domain Sustainable Development and Protection Plan (ADSDPP) in 10,054.88 hectares of forest lands in Barangay Hagpa, Impasug-ong, Bukidnon. The ancestral domain is located in the planning area of a municipal watershed, a Barangay development plan, the Mt. Kimangkil Natural Park Protected Area, a CBFMA, and the concession area of an abandoned Timber License Agreement.

¹⁵ This includes the Joint DAR-DENR Administrative Order No 3, Series of 2014 entitled "Guidelines in the disposition of privately-claimed agricultural land".

lands, although at one time it was estimated that some 200 thousand hectares of lands under CARP consisted of UPAL lands. The issues surrounding UPAL lands are often captured only through specific case studies.¹⁶

Third is the need for program-wide impact studies of DENR-CARP implementation. Many if not all of the impact studies conducted on CARP have focused solely on the work of DAR and on the impact of agrarian reform on private and government-owned lands. The impact of DENR-CARP work is covered mainly through case studies, rather than on a program-wide scale. And although many studies have been conducted on CBFM they often focus on environmental impact and resource management, rather than on tenure security and people's livelihoods.

Finally, there is a question of whether the reform of 'public' lands will continue under CARP and DENR. Through Republic Act 9700, Congress set the date of 30 June 2014 as the deadline for completion of land acquisition and distribution of *private* lands by the DAR under CARP. As the redistribution of *private* lands, and the work of DAR begins to wane, what will happen to the land tenure work of DENR?

For ISF/CBFM 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 would happen to those whose agreements are ended, what compensation would be given to them?

It should be noted that the policy instruments and programs for tenure reform in public lands continue to exist. These include the distribution of A&D lands, and the granting of usufruct rights under CBFMAs. However, in the absence of a CARP program framework in public lands there is a danger of tenure reforms being ignored by the bureaucracy. ○

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¹⁶ Among the documented cases involving UPAL lands are on the Maningat Estate in Tuy, Batangas, by the Center for Agrarian Reform and Rural Development (CARRD) and on coconut tenants in Homonhon Island in Guian, Eastern Samar, by KAISAHAN.