

# **Questioning the Century-Old Paradigm – The Case of Securing Land Tenure in the Philippines**

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**Key Words: security of tenure, land administration, affordability, sustainability, Philippines**

## **SUMMARY**

Securing land tenure becomes a much-sought development intervention in the developing and transition economies as well as in some developed countries. Undoubtedly, it serves as an indispensable element to achieve sustainable development, social stability and poverty reduction. The global debate has been shifting to address the “what” and “how” questions - what are the best forms (and combination) of land tenure arrangements and how to best provide security of tenure to the poor given its inherent complexities and country-specific peculiarities. A range of options and good practices has been provided by a wealth of literature and some proceeded further by tackling affordability and sustainability issues. However, only a few really discussed in some details the issues pertaining to affordability and sustainability and at best, were only able to afford “generic” recommendations. Most of the literature never attempted to offer a “fixed” model or a guideline on the way forward. Each country has to choose its own direction.

This paper is an attempt to raise questions on the current system of land administration and registration in the Philippines which was shaped for more than a hundred years as a result of its colonial past and was “persevered” and maintained through short-sighted reforms that only produced limited impacts and in some cases, worsen the situation. The paper introduced questions particularly on issues of affordability and sustainability and hope to contribute to the debate by providing some ideas and directions on how to address them.

Other developing countries of similar situations are most likely to benefit from the discussion of the paper through the description of the lessons learned, the questions that were raised against the status quo and the strategies that were put forward. In summary, the strategies are centred in responding to the ‘how’ questions on the following: reduction of costs in the first registration process, reduction of transaction costs to a level that will still attract the formalisation process and striking the balance between affordability and sustainability issues.

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## 1. INTRODUCTION

*Land issues, particularly securing land rights, have finally emerged at the forefront of the global agenda.* This statement, or maybe an “understatement” already by this time, was highlighted by UN-HABITAT Global Campaign for Secure Tenure (2001) and UN-FIG Bathurst Declaration on Land Administration for Sustainable Development (1999). The same has been reinforced in 2003 by the World Bank Policy Research Paper entitled “Land Policies for Growth and Poverty Reduction”. Backed up by a wealth of empirical findings and studies, the publication emphasizes that securing property rights is an essential element in improving the welfare of the poorest, including traditionally discriminated groups such as women, indigenous people and herders, and as a key measure in achieving economic growth as it promotes investments and productivity, facilitates efficiency of the land markets and contributes to the development of credit and financial markets. On the other hand, the World Bank’s “*Doing Business*” has picked up property registration as an indicator for evaluating the business climate.

Securing land tenure becomes a much-sought development intervention in the developing and transition economies as well as in some developed countries. Undoubtedly, it serves as an indispensable element to achieve sustainable development, social stability and poverty reduction. The global debate has been shifting to address the “what” and “how” questions - what are the best forms (and combination) of land tenure arrangements and how to best provide security of tenure to the poor given its inherent complexities and country-specific peculiarities. A range of options and good practices has been provided by a wealth of literature and some proceeded further by tackling affordability and sustainability issues. However, only a few really discussed in some details the issues pertaining to affordability and sustainability and at best, were only able to afford “generic” recommendations. Most of the literature never attempted to offer a “fixed” model or a guideline on the way forward. Each country has to choose its own direction.

This paper will attempt to put the Philippines’ context in this debate focussing on affordability and sustainability issues on the formalization process and subsequent land transactions. It will try to mirror the situation and suggest ways to improve it. The paper will proceed in four three parts. Part 1 will provide an overview of the country’s land tenure system and its present status. Part II will provide an assessment of the present situation focussing on affordability and sustainability issues. Part III will present some directions, challenges and sustainability considerations. Lastly, some conclusion will be afforded in Part IV.

## 2. OVERVIEW OF THE PHILIPPINES' LAND TENURE SYSTEM

### 2.1. Historical background

The Philippines, prior to its colonial period, are comprised of scattered *barangays* (villages), led by a *datu* or village chief who acts as the head administrative leader – not as an absolute ruler. For a long time, land is held communal in nature, being the *barangay* as its administrative unit. Land is being tilled by all, including by the *datu* and his family, and everybody has access to land for their subsistence. These arrangements are normally governed by customary laws and established traditions (Constantino, 1975). The notion of private ownership of land was irrelevant in the *barangay* social order, being an extension of the family. It was said that during this time, it did not make sense to claim particular tracts permanently, given there was much land available (Francia, 2010). Per William Henry Scott, the first historian to discuss Philippines pre-Hispanic land tenure, “these lands were held in usufruct, not in fee simple – that is to use but not to own or alienate” (May, 2004).

The Spanish colonization (1565-1898) has introduced two systems that have greatly influence the whole socio-economic and even political dimensions of the country- the *encomienda* system (like in Latin American countries) and *hacienda* system. The systems, though different but relatively connected, is a primary cause of changing the face of the society from scattered communities but cohesive society into an integrated country of divided people. The Filipinos' idea of communal use and ownership of land was replaced with the concept of *Regalian* doctrine and private individual ownership. Such concepts, among others, became an instrument towards landlordism in the Philippines – being the colonial masters as landlords and the Filipino natives as poor peasants (Francia 2010, Constantino, 1975).

The Philippines were transferred from Spain to the United States by the Treaty of Paris (1898) which includes a provision to respect Church landholdings which covered large tracts of land. The American influence includes the introduction of a Torrens System of Registration in 1902 (based on Massachusetts law), the enactment of Friar Lands Act of 1903 by which an estimated 166, 000 hectares of friar lands were acquired for redistribution purposes, enactment of Cadastral Act in 1913 which introduced compulsory registration of land ownership through the courts, the introduction of the Public Land Act of 1936 which provides measures by which a public agricultural land can be accessed through homestead, free patent (by prescription), sale or lease and some attempts to regulate the landlord-tenant arrangements (e.g. Rice Tenancy Act of 1933) (Constantino, 1975, Constantino and Constantino, 1978).

The Post World War II years have tried to contribute to the improvement of land tenure system in the Philippines through the enactment of land reform laws such as Land Reform Act of 1955 (redistribution of large estates) and Agricultural Land Reform Code (abolishing share tenancy arrangements). For one, the Reform Code has only benefitted ten per cent of the Filipino tenants during that time because of the provisions favouring big landowners (Constantino and Constantino, 1978). Despite the good intentions of a few people in government, radical improvements were not achieved due to the influence of the landed class who are well represented in Congress. As rightfully pointed out by Huntington (1968), a basic

incompatibility exists between parliaments and land reform. In 1972, a more decisive land reform law was promulgated through Presidential Decree No. 27 placing all rice and corn lands with more than seven (7) hectares to the redistribution program. Zaide (1994) considered the land reform program as the greatest achievement of the Marcos regime.

In 1986, after a bloodless people uprising, Marcos dictatorship has ended and the chain of events have signalled the democratic transitions of the country. Land issues, since then, have continued to be part of the country's development agenda, albeit not in an integrated approach.

## **2.2. The present situation - the sum of more than a hundred years of trial and error**

The country's colonial past is maybe too long (about 380 years) which probably explains why its political, economic and cultural influence can still be traced up to this time particularly on land management and administration.

The concept of land as a community resource before was redefined as wealth as well as commodity. Such transition, which happened in such early years, has brought disintegration to the Filipino society as well as huge wealth disparities. The introduction of American "approaches" (e.g. Torrens system of land registration, cadastre, and public land laws) during the time where most of the Filipino people lacks education and have no ability to compete economically and politically led to further accumulation of land by the elites and the legalization of the status quo.

Landlordism as introduced by the Spanish colonizers is still at this time the struggle of the landless farmers. The only difference is that they are fighting it against no foreigner or religious friars but from Filipino elites (big landowners) with some allies from the political arena (e.g. Congress). Land redistribution initiatives in the past have failed or have limited impacts due to lack of seriousness and political will. Such programs or laws were only introduced to fight insurgency and rural unrest (e.g. U.S. colonization and post-world war era) and for political gains (Marcos regime). Efforts towards agrarian reforms proved to be difficult, controversial and slow.

However, since the last two decades, legislations were further introduced on land reforms but not without difficulties and loopholes - unintentional and otherwise. These legislations include the recognition of indigenous peoples' rights, the enactment of a comprehensive agrarian reform law (which include all land types and crops) and the recognition of informal settlements in urban and peri-urban areas. These laws primarily addressed the asset reform programs of the government. But what is left in the dark is the "means" by which these access to land and tenure reforms can be easily achieved and rightfully protected and sustained, the so-called land registration system.

## **2.3. Status of land tenure and land markets**

The Philippines has a total land area of 30 million hectares, 50% of which is considered forest

lands, 47% are classified as alienable and disposable lands and about 3% as unclassified lands. It is estimated that there are about 24.2 million parcels within alienable and disposable lands with 13.1 million parcels already titled and 11.1 million parcels are untitled (DENR-LAMP, 2004a). Moreover, most of the forest lands in the Philippines are occupied by the poor without secure tenure while in Metro Manila alone - the number of informal settlers can reach up to four (4) million people (Teh A.R., 2004). Meanwhile, the agrarian reform program has been extended (again!) until 2014 - a program which was initially planned for 10 years in 1988. Land titling and registration efforts over ancestral lands and informal settlements are moving relatively slow too.

On the other hand, De Soto (2000) valued the dead capital (those real properties without legal documentation) in the Philippines at US\$ 132.9 million in 2000 which is approximately about PHP 5.855 trillion. In 2004, a land markets study has confirmed the findings of De Soto, although with lower estimates. The estimates include that the “true” negotiable value of the Philippine land market in 2000 is about PHP 4.925 trillion at current prices and expected to increase to PHP 11.552 trillion by 2010. The report also showed that sixty percent of the over-all land market is in the informal system (Urbis Philippines, 2004:68).

### **3. QUESTIONING THE CENTURY-OLD PARADIGM**

After more than 100 years since land titling has been introduced in the Philippines, about 11 million parcels are still untitled and a great percentage of those in the legal system are migrating back into the informal system.

#### **3.1. From informality to legality**

The Philippines has long recognized that securing land rights is an indispensable way to unlock the citizens’ potentials for productivity, social security and economic self-sufficiency. But why do these pro-poor programs result in lesser impacts? Why, up to this time, the country is still on the process of land distribution and redistribution (agrarian reform)? How many more years or decades are needed to secure rights of the informal settlers in the urban areas and prevent their growing numbers? How about the case of the indigenous peoples? How many more generations will they wait to secure their “invaded” rights. When can these programs end and when do people start reaping the intended benefits? Answers could lead to more questions rather than concrete answers. However, the present land registration system is probably a major contributing factor in these challenges as it failed to respond appropriately to the growing demands of the times particularly on the issue of affordability. Below are some questions on the first registration of land rights which are intended to raise some awareness, discussion and possibly solicit some concrete answers.

#### **3.2. Cost of first registration – a view from the “beneficiaries” side**

From the point of payment of “legal” fees, it is minimal and affordable. The cost is minimal (e.g. application fee) and in some cases it is free (e.g. agrarian reform). But for some, even

“minimal” fees are not affordable. Substantially however, the cost is more related to the process, time and payment of inappropriate fees. The steps and requirements needed for the formalization process are too lengthy and various procedures are administered by different agencies with limited collaboration (Mellors and DBM 2002). De Soto pointed out that it would take 168 steps for an illegally-occupied property to become legal and this would take between 13 and 25 years (De Soto 2000). The example provided by De Soto could be the extreme case but with some semblance of truth. Take the case of Mr. Bonifacio who has spent 18 years of his life trying to secure a title over a small piece of residential land he has been occupying for many years (Grupong Sinehan, 2004). The land is covered by a land proclamation and is located in the heart of Metro Manila. Until now, he has not received a title. On another note, the experience of a 66-year old woman who has lodged a public land application in the 1970s over a rural land which she has occupied since birth is very disheartening (DENR-LAMP, 2002:7). She has completed all the requirements and followed up her application every two years. In year 2001, she was told that her file was lost and she has to reconstitute all her papers and resubmit again at her own expense!

Access to government land by the poor, particularly through the provisions of the Public Land Act, has been limited due to the unreasonable time requirement on occupation and payment of back taxes and accrued interests. The land must be occupied since 1960 under the administrative procedure and under the judicial procedure; it must be occupied since 1945. Paying back taxes since 1945 or since 1960 with the corresponding interest rates and other surcharges could mean a cost more than the value of the land itself especially in the rural areas. In addition, the transacting public have to travel from one agency to another to complete the requirements and most often than not, they have to resort to payment of bribes to facilitate the process. In summary, the administrative procedure of titling necessitates going through the following:

- Transacting with several institutions each with their own bureaucratic guidelines and requirements and increasing levels of decision making process which are normally located at different geographical locations
- Undertaking land survey and boundary demarcation (at high costs!)
- Preparing countless and inconsistent documentary requirements
- Paying of related taxes and fees, and
- Seeking the help of a land surveyor or a lawyer (e.g. inheritance).

The whole process proved to be slow, expensive and inefficient. Meanwhile, going through the courts will need huge investment (e.g. lawyers’ fee, publication, etc.) and part of the process will require some decision from the central office in Manila. As World Bank (2005:3) further observed, the cost of obtaining a title that can be defended in the courts is over US\$ 2,000, one of the highest in the world.

### **3.3. Cost of first registration – a view from the ‘government’ side**

Most of the costs associated with the administrative first registration of ownership including land surveys are being subsidized by the national government and in some cases, it is almost

free (e.g. agrarian reform). In addition to the “actual” costs, maintaining the current institutional arrangements proved to be costly as all agencies maintain similar land records at different locations, undertake “rigid” checks on private sector’s works (e.g. land surveys), maintain offices even on areas with no or limited demand for the land services and seemingly, the “huge” overhead costs of land agencies in managing the system. At some point, a high ranking official has commented on the issue by saying, “No wonder you perpetually had this program at hand because your 10,000 personnel depended on it. The program is perpetual because the moment you complete the program, you abolish [the] DAR [Department of Agrarian Reform]” (Tubeza P. 2006).

#### **4. QUESTIONING THE ASSOCIATED COSTS**

Does government really need to spend that much? Seemingly, for decades, only a few have introduced innovations to improve the whole system especially on how to reduce costs. Similarly, very few have ever raised the questions below:

##### **4.1. Why the need for higher accuracy survey for low-value lands?**

The accuracy of land surveys in the Philippines is standardized and applied across the whole archipelago which requires the use of precise instruments (EDMs, total stations) and prohibits the use of remote sensing data (e.g. satellite image) and low-cost hand-held GPS receivers. Is there really a need for accurate surveys when agreements on claims and boundaries by the neighbours were already reached? Why the need to apply the same survey accuracy level for both high-value urban lands and low-value agricultural lands? How about demarcation of thousands of hectares of ancestral land claims where boundaries coincide with natural features such as rivers, etc.? Does it really need to be measured by centimetre-accuracy level? These questions need to be addressed on a policy level with some urgency. The good news is that to correct this practice, there is no need for amending or introducing new laws and what is required is to amend the existing administrative regulations. Stretching the government scarce financial resources is just an arm-length away.

##### **4.2. Why the need to spend so much for checking survey works done by private sector?**

About 50% of the total number of staff of regional offices which are responsible for verification and approval of land surveys are being utilized for reviewing the works of the land surveyors (mostly in the private sector). The experience of pilot projects of the Land Administration and Management Project (LAMP) in Leyte province revealed that it takes more time to verify the survey documents rather than the time spent for actual field surveys and adjudication activities. But this reaction of the government is not without historical basis. In previous cadastral surveys, most of the survey works proved to be erroneous and with low quality. However, such ‘reaction’ proved to be costly. How about enforcing more sanctions for erring land surveyors like blacklisting them?

### **4.3. Why the need to perform same functions?**

There are a lot of “obvious” overlaps of functions in the present system such as having multiple agencies approving land surveys and managing land records and information at various levels. With the management of similar records spread all over various agencies and with piece-meal updating (which is sometimes not even done) - inconsistency and conflicting official records are inevitable. In the case of the overlaps in approving land surveys – the issuance of overlapping titles is always a possibility. Worse, the transacting public has the burden of correcting such official records.

### **4.4. Why the need for so many layers of checking and decision making process?**

Burns A., Brits A. and Grant C. (2002:6) has noted that in the Philippines, land registration is decentralized over 162 land registries and only “over-sight” functions are exercised at the central level. What they failed to say is that “over-sight” role includes the administrative powers on the procurement and staff recruitment process. Likewise, if the public land application is more than 10 hectares, the application has to be approved by the highest official of a ministry. An approved survey plan, for one, reflects several reviewers, initials and signatures before the final approval by a director level official in the region or at the national level.

### **4.5. Why focus on individual titles alone?**

In the Philippines, secure land tenure is synonymous with the issuance of individual titles - no less. But issuance of individual titles proved to be time-consuming, requires rigid reviews and processing and costly (e.g. accurate surveys, management costs). Why not explore other ways to provide secure tenure? How about issuance of communal titles, especially for organized informal settlements? What happened to the issuance of “collective” Certificate of Land Ownership Awards (CLOAs) under the agrarian reform? Why abandon such strategy? Meanwhile, why not explore (and promote) other forms of land tenure, such as communal leases, occupancy rights, “temporary” titles or long-term stewardship contracts? These will surely lower the cost of securing land tenure of the poor and will prevent market distortions and the so-called market-induced evictions. Do individual titles serve as the real measure of secure tenure? Is it not possible that security of tenure be represented by any document issued, registered and protected by government authorities and well accepted and recognized by the community? Why focus on the “big bang” approach rather than on incremental approach but affordable way which can actually serve more people especially the poor?

## **5. FROM LEGALITY TO WHERE?**

After more than 100 years of titling and registration, the Philippines has finally able to at least estimate how many titled parcels are there in the registry which is about 13 million parcels. Out of these 13 million parcels, about 30,000 transfers per month were being recorded (Albano M., 2002) as compared to Thailand’s more than 300,000 transfers per month (Burns T., Brits A. and Grant C., 2002:14). With this situation in the land market, the government is



losing so much with regards to “loss” of possible revenues and the registry continues to lose its integrity as it is not up-to-date and does not reflect anymore the realities on the ground (mirror principle). The objective of bringing “informalities” to the formal system is to facilitate land markets, among others, and to enable the poor to have access to the credit market and be part of the economic mainstream, in general. However, the people tend to choose the way back to “informalities” after having so much trouble getting into the formal status. Maybe, De Soto (2000) is right when he concluded that in the developing countries, like the Philippines, not only the “entry“ costs are high but also are the maintenance costs which have prompted the people to opt out of the formal system. Below are four possible reasons, among others, why the people chose not to stay in the formal system:

### **5.1. Ownership transfer means dealing with the “experts” again**

Transferring an ownership would mean paying the services of the lawyers or real estate agents and at times, getting the services of land surveyors as appropriate. The process is so “legalistic” and “technical” that no ordinary person would dare go through the formal land registration process without the assistance of the professionals. Moreover, peoples’ confidence to the system is too low and any would-be transactions will involve checking, double checking and further investigation. Even the banks have been establishing a separate office to investigate lands subject of mortgage to check the authenticity of the titles and other documents being presented to them and they even conduct actual site inspections.

### **5.2. Ownership transfer means going through (again!) with the bureaucratic processes**

If going through the bureaucratic process of formalization is not enough, going through the subsequent transfers of ownership will again involve various procedures and countless requirements and has to pass through several agencies. If the transfer will involve land surveys, then the waiting time has to be extended. A mere transfer of title will involve about two weeks to two years depending on whether you pay facilitation fees or not (Isles C., 2002). The same transaction in Thailand will only take two and one half hours (Burns T., Brits A. and Grant C. (2002:11).

### **5.3. Ownership transfer means payment of real property taxes**

The process of collecting real property taxes is simple in the Philippines. Such task is tied up with the ownership transfer process. Any transaction involving the registration of title transfers or change of ownership will have to be cleared of all taxes including arrears, surcharges and interests. But does it really help? A study showed that the collection rate of real property taxes has rarely exceeded 60 per cent during the period 1983-1997 and worse, the collection efficiency even decline from 56.7 per cent to 53.8 per cent. (NTRC and PALAMP, 2002:21)

### **5.4. Ownership transfer means high transaction fees and taxes.**

Aside from the costs associated with the hiring of “experts” - the transacting public has to pay

government taxes and related fees. Table 1 shows the breakdown of the public sector costs for at least four transactions (leading to the issuance of a Transfer Certificate of Title) of different values, ranging from PHP 174,000 (~ USD 4,000) to PHP 50,000,000 (~USD 1.15 M.), assuming honest declaration of the selling price (NTRC and PA-LAMP, *ibid*:19-20).

Consideration	Frequently Declared at ROD 174,000	% of Total	Average CGT Transaction 470,000	% of Total	Middle Class House 3,000,000	% of Total	Developer Transaction 50,000,000	% of Total
<b>BIR</b>								
Capital Gains Tax @ 6%	10,440		28,200		180,000		3,000,000	
Documentary Stamp Tax on sale @ 1.5%	2,610		7,050		45,000		750,000	
[Documentary Stamp Tax on mortgage]	358		950		6,010		100,010	
<b>Total BIR (not including DST on mortgage)</b>	13,050	87.8%	35,250	89.4%	225,000	91.0%	3,750,000	91.2%
<b>LGU</b>								
LGU Transfer Tax @ 0.5%	870		2,350		15,000		250,000	
LGU certification fee	30		30		30		30	
<b>Total LGU</b>	900	6.1%	2,380	6.0%	15,030	6.1%	250,030	6.1%
<b>Register of Deeds</b>								
Entry (assuming four required on average)	60		60		60		60	
Annotation (assuming mortgage involved)	60		60		60		60	
Certified copy of the Court order	15		15		15		15	
Issuance of transfer certificate of title	30		30		30		30	
Registration fees	728		1,638		7,098		112,848	
Certified copy of the document	15		15		15		15	
<b>total RoD</b>	908	6.1%	1,818	4.6%	7,278	2.9%	113,028	2.7%
Overall total -- government taxes and fees	14,858	100.0%	39,448	100.0%	247,308	100.0%	4,113,058	100.0%
Taxes and fees: percentage of consideration	8.5%		8.4%		8.2%		8.2%	
RoD fees: percentage of consideration	0.52%		0.39%		0.24%		0.23%	

Table 1. Costs of Transactions: Government Taxes and Fees

Transaction costs are so high that it already impedes the country's economic development through the following (NTRC and PA-LAMP, 2002):

- discourage formal transactions because buyers and sellers find it harder to agree on a selling price;
- provide opportunities for inappropriate practices;
- make seller and buyers seek informal ways of transacting to avoid the taxes and inappropriate practices, thereby reducing the number of formal transactions even further; and
- put pressure on the valuation system to reduce the assessed value of property to compensate for the high tax rates.

High transaction costs encourage tax avoidance and corruption in the sector. Take for instance the example provided by Antonio (2006). To avoid tax (e.g. CGTs), taxpayers are willing to pay bribes to government staff. As a result, a public servant can possibly receive a 'bribe' more than his or her retirement pay for only one 'transaction'. This is particularly true for high-value lands in the urban areas.

Figure 1 below clearly showed how high transaction taxes and fees impede socio-economic performance of the country.

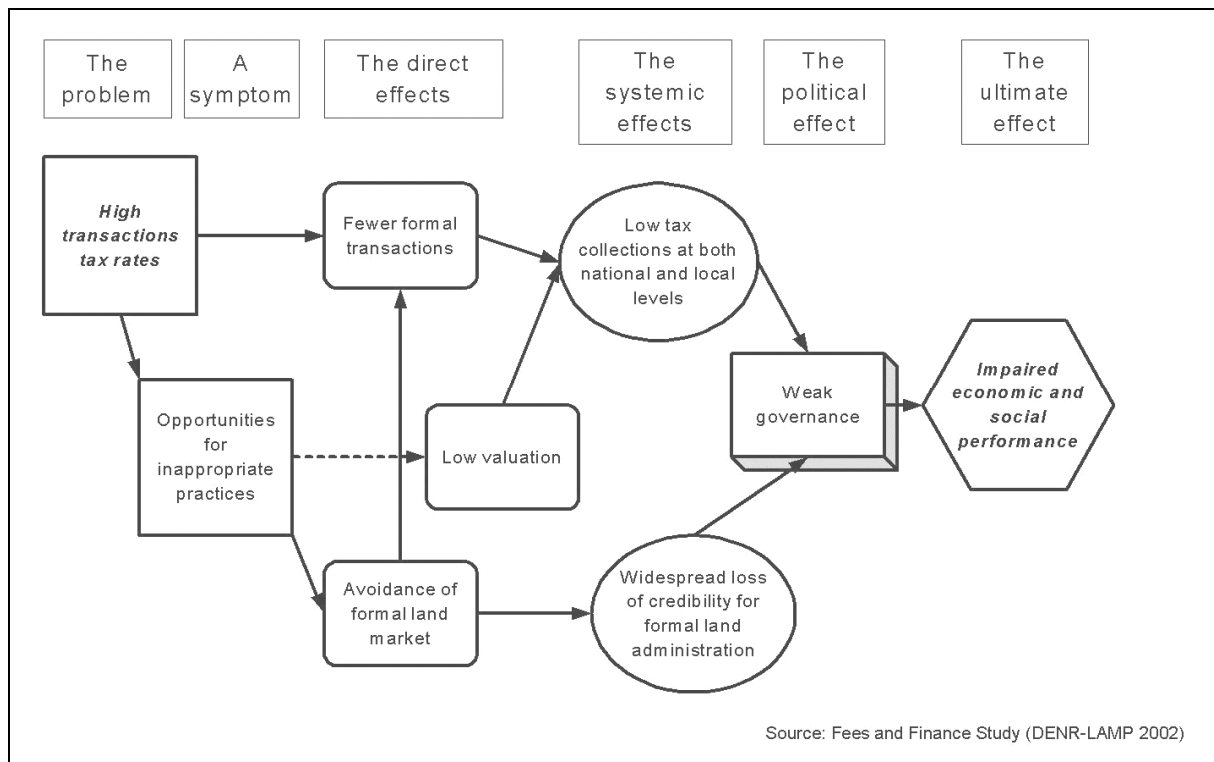


Figure 1. The Effects of High Transaction Taxes

## 6. REBUILDING A NEW EDIFICE - CHALLENGES AND FUTURE DIRECTIONS

Developing countries, like the Philippines, have to start responding on the “realities” as presented above. However, ‘where to go’ is a question which is not easy to answer. But it is probably worse if the issues will be taken for granted. Below are some principles, options and suggestions on how to proceed, particularly on how to address affordability issues:

### 6.1. Clarify Objectives

If the intention of the government is to recognize the peaceful occupation of poor people over government lands then procedures should be as simple as to “facilitating” agreements among the parties and recording and protecting such rights in the registry. There is no need for countless documentary requirements, meetings and “empty” promises and legal, technical and financial barriers. The procedure should be simple and understandable, documentary requirements for presentation should be minimal and straightforward and fees should be affordable. If the objectives are clear and widely accepted, pro-poor programmes can easily be implemented and people’s participation in the process is guaranteed. Both of these will result to cost reduction in the process.

## **6.2. Be responsive**

Being responsive necessitates listening to the clients or to the general public. What do they want? What makes them comfortable in transacting business? What improvements do they see fit? Do they have any ideas or suggestions to improve the process? In other words, the general public must be able to be part of the decision-making process and must be able to influence policy and strategic directions. There are various ways to ensure that the “voice” of the clients is heard like setting up oversight committees, inclusion of key stakeholders on monitoring and evaluation activities, conducting assessment or exit surveys or a simple placing of “suggestion” box. Another good practice is to deliver the services at community level; for example, by setting up mobile service centres and/or one-stop-shops. Legitimacy of government decisions and peoples’ ownership of the whole process provide a foundation for improved transparency and accountability.

## **6.3. Techniques are solutions not a burden**

Techniques are tools to implement land policies and strategies and not the other way around. In the Philippines, changing any established technical parameters particularly on land surveys is a real challenge. Technical people in the bureaucracy as well as in the private sector do not see the need to lower the accuracy levels even on low-value lands. Accuracy is important particularly on high value urban areas and on areas where conflicts may arise or where public safety is at risk due to small measurement errors. But definitely this is not the case in a rural situation where everyone can walk through others’ rice fields without fear of being shot due to trespassing. It is more important that agreements are reached among neighbours, the process is transparent and government acts as “facilitators” and guarantees the reliability of official records. A combination of reforms on the technical side including the removal of numerical descriptions on the face of the title can result to reducing the land titling and registration cost to more than 30%. Efforts should be exerted towards educating and convincing the professionals as well as the policy makers that technical solutions need to be flexible to respond to the needs of the people and serve as “catalysts” in implementing land policies. In this way, government scarce resources can be stretched and its programs’ “reach” can be expanded. However, in a meeting participated by land agencies and professional organization, a mere recommendation to decrease the dimensions of concrete corner monuments used as boundary markers to reduce some costs solicits a big laugh from the crowd. Seemingly, any reform in this case will not be easy.

## **6.4. Minimize cost**

There are various ways to minimise the cost of providing security of tenure to the poor particularly on the part of the government. Some of them were already discussed above and some “hints” have already been provided in previous sections of this paper. What is clear though is that there are interventions that can be made to reduce costs in at least three areas - policy, technical and administrative.

### **6.4.1. Institute policy reforms**

Securing land rights does not necessarily mean issuance of individual land titles. As what is happening elsewhere, issuing individual land titles is not always the answer and definitely not an affordable response (UN-HABITAT, 2001:14). The same is true in the Philippines. Maintaining the status quo could mean another turn of the century to transform the 11 million untitled parcels of land into legally recognized status. Experience in systematic land adjudication in rural areas by the LAMP project revealed that between 80-90 per cent of intended beneficiaries are participating during field activities. But after the parcels have been demarcated and corner monuments have been put in place as witnessed by the community members, particularly the neighbours, the participation rate decreases in the succeeding steps (e.g. submission of evidence, interviews, final processing, payment of fees, etc.). With this example, security of tenure is really about a state of mind and are largely based on social relations rather a mere document or a complex process pushed by the government. It is about time that the paradigm be changed. There are several tenure options and most of them can be implemented in the Philippines' setting and some are actually tried (e.g. collective CLOAs). These tenure options include: delayed freehold, leasehold, shared equity, occupancy rights, cooperative tenure and customary tenure (e.g. as used for recognizing indigenous peoples' land rights) (UN-HABITAT 2001:8). The idea is to provide security of tenure at the shortest time possible to benefit more people rather than providing individual titles to a few at a high cost and extended time.

On the other hand, efforts should be geared towards abolishing the judicial mode of titling (first registration) and strengthen the administrative mode of title issuance (or issuance of other forms of tenure instruments). Maintenance of the two systems is costly both financially and administratively and further contributes to the deterioration of the land registry system.

### **6.4.2. Consider other technical options**

Introducing reforms on technical matters could mean big savings on the part of the government and an opportunity to expand its services to more people. It could also mean less cost for the general public. Below are some ways to possibly cut costs but still maintain its technical reliability or even improve it:

- Allow lower accuracy surveys for low-value lands (e.g. agricultural lands).
- Introduce the use of low-cost GPS receivers and remote sensing maps (e.g. satellite image) to adjudicate rights on land
- Limit the survey documents required from the private sector for the verification of land surveys. Survey documents could be limited to numerical coordinates and a survey plan.
- Pass on the accountability to the practitioners. Do not spend so much time for things which are “obvious” responsibilities of the private sector. Enforce sanctions seriously.
- Assign one agency for quality control of all survey matters or better yet, assign a single agency in managing land records.
- Introduce ‘one title document’ system. Issuance of “new” title documents for every

transfer or transaction does not only create confusion and possible overlaps but also introduce some unnecessary costs.

- Introduce pro-forma documents for all transactions and make them available to the public. This process will lessen costs with regards to consulting “professionals” on the part of the general public. For the government, this would mean reduced costs as the review process will be much easier and efficient. This would also mean lesser additional pressure on the limited number of highly qualified staff.
- Allow mass issuance of government certifications especially if required by pro-poor government programs. For example, the requirement of a certification that the land is within non-forest land and/or government land could be done in bulk rather than individually. This saves time and management costs.
- Introduce appropriate automation and/or information system albeit cautiously. Weigh its demand against existing capacity and expected implementation costs.

### **6.4.3. Simplify administrative arrangements.**

Simple changes to administrative arrangements can mean huge savings on the part of the government and can help regain trust from the general public. These changes are also ways to better serve the public and reduce their transaction costs.

- Merge/co-locate like/similar functions. These could be done either by institutional reforms or establishing one-stop-shops at strategic locations with clear and agreed arrangements.
- Institutionalise systematic approach of titling and registration as a national strategy. Focus on areas with high demand for it and where possible partners (e.g. local government, NGOs) can be found. Focus on increasing the participation rate during the process. As proven, low participation rates can have a high bearing on the titling cost (DENR-LAMP, 2004b:28). In addition, it enhances transparency in the process and reduces possible conflicts in the future.
- Clarify roles and responsibilities. Responsibilities should be clear as to who collects, maintain and update land records. Such information must be shared and accessible.
- Implement cost-sharing arrangements. For instance, cadastral surveys and field data collection can serve other purposes such as for local governance, land use planning and real property taxation.
- Do not maintain unnecessary documents and records. Maintenance of so many “unnecessary” records requires some administrative costs in the process.
- Deputize more local people and mobilise community leaders for land adjudication activities and for settlement of disputes. This will not only reduce some costs but also enhance community ownership and promotes sustainability in the process.
- Decentralise powers and authorities at appropriate levels. Good governance principles point us to adhere to the principle of ‘subsidiarity’ to enhance efficiency and accountability.
- Aim for completion. Focus should be towards finishing what has been started. It is not good to over-emphasise accuracy and quality without considering cost and time element. Results and numbers are better measures of success and enhance credibility

in the process.

## **7. SUBSEQUENT LAND TRANSACTIONS: AFFORDABILITY VS. SUSTAINABILITY**

One may easily conclude that after subsidizing the “entry” costs of formalization process, government should impose taxes and fees on subsequent transactions to recover costs and maintain the system. Such premise is but rational. But the real challenge is what are the “right” and affordable transaction taxes or fees.

It is not difficult to conclude that imposition of “high” transaction costs can result to low valuations and few formal transactions. A study further observed that National Accounts statistics showed that real-property related sectors have grown less rapidly than the overall economy since 1990, thereby not contributing to the nation’s economic growth – a phenomenon which is unusual for developing countries like the Philippines (DENR-LAMP, 2002:35). Another study recommends an option by vesting the management of most of the land-related taxes to local government (NTRC and PA-LAMP, 2002). As further claimed by the study, this would lead to an increase in the over-all revenues for the government. However, the study admitted that the recommendation is a little bit radical, if not ambitious, and will surely add to political tensions between the national government and local governments.

### **7.1. Where Do We Go From Here?**

It is extremely difficult to initiate any policy changes towards lowering of taxes and fees especially for third world countries like the Philippines. This is clearly manifested when a policy recommendation to halve the capital gains tax (NTRC and PA-LAMP, *ibid*) did not solicit positive response from the Finance Ministry. It is clear that the optimum way of addressing this issue is to strike a balance between levying taxes and fees and encouraging formal transactions. Any miscalculation can result to further loss of government revenues and further erosion of the formal registration system. Below are some points for consideration:

- **Reduce costs and be cost efficient.** Ways should be explored towards decreasing the costs of formalization process including costs of running the system, in general. A review of the number of staff that runs the system should also be looked at to avoid instances where the scarce resources are being eaten up by the “bureaucracy” and procedures are being hampered by many layers of decision making.
- **Reduce costs of collection.** Each agency situated at different locations collects taxes and fees at different stages of registering land transactions. A single collecting agent may be set up, either through one of the agencies or a private contractor, to reduce collection costs and enhance collection efficiency. Bundling of all taxes and fees into one “tax”, say “transfer taxes” can also simplify the process and further reduce administrative costs and opportunities for corruption.
- **Delay payments?** How about delaying of payments of taxes and fees up to the second

or third transfer? Seemingly, those involved on the first land transactions or transfers are those who benefited from the process of first registration of ownership and such transactions are their ways of enhancing their productivity. Instalment options should also be explored.

- **Provide incentives and enforce sanctions.** One of the reasons of high transaction taxes and fees is to compensate for the “expected” low collection of taxes (e.g. collection of real property taxes by local governments). How about setting up incentive mechanisms such as providing incentives for agencies and personnel that collect “surplus” taxes from the established targets? And enforce sanctions for those that never achieve their targets?
- **Privatise the services?** Explore the role of the private sector in the whole process. For example, tax collection can be undertaken by the private sector and could enhance collection efficiency in the process. Providing incentives to encourage private sector’s participation and innovation while government still maintaining control and ensuring quality will be a good way to proceed.
- **Strengthen land registration system.** One of the major factors that discourage formal registration of transactions is because of the lack of confidence in the system. Initiatives should be taken to strengthen the land registration system to attract more people to the formal system and justify their “value for money”. For instance, the so-called “assurance fund” as a means to pay back the titleholders in case of mistakes introduced by the system or by government staff in the registration process (e.g. typographical errors) should be made more transparent and easily accessible by claimants. Until now, nobody has ever been reported to have successfully claimed from the fund.
- **Government subsidy?** How about adopting “selective” measures where people pay a higher price if they can afford to pay (e.g. business) while providing a subsidy to those with no or less capacity to pay? However, designing and administering such a system, based on social equity would be very complex, and would create economic distortions in the allocation of scarce resources (Lyons K. and Chandra S., 2001:24).
- **Invest some resources for research.** The cost that will be incurred to discover the “missing” link of “efficiently” running the system is minimal. Government should try to invest some resources for these types of studies to provide some policy guidance in the future.
- **Explore reduction of transaction taxes and monitor markets.** Initiatives should be taken to explore some reduction of transaction taxes and monitor its impact to the markets. For example, capital gains tax can be reduced to a certain percentage or redefined it as a tax on mere “gains” only and not on the market value of the property. Experimenting, even on temporary basis, will assist government to find the right directions.
- **Raise the level of awareness to political level.** Structural reforms to succeed needs political commitment not only from the “bureaucrats” and non-government actors but most especially from the politicians who can make or unmake changes to the system. Raising the level of awareness of the issues associated with the registration system particularly on issues of affordability and sustainability could be the best way to start addressing the identified challenges. .



## 8. CONCLUSION

The Philippines, like any other developing countries, which is trying to improve the security of tenure of the poor at scale, is at the crossroads. After investing heavily, mostly through loans, and significant efforts have been undertaken in securing land tenure of its citizens for more than a century, it is about time to step back and rethink. Is this really the right way forward? Are there any other options or ways that can guarantee success? Can the country afford politically, financially and morally, to keep the status quo?

This paper has questioned the current system of land registration in the country which was shaped for more than a hundred years as a result of its colonial past and was “persevered” and maintained through short-sighted reforms that only produce limited impacts and in some cases, worsen the situation. The paper has introduced questions particularly on issues of affordability and sustainability and has provided some directions on how to address them. The strategies that were put forward are three-fold: reduce costs in the formalization process, reduce transaction costs to a level that will still encourage the formalization process and weigh affordability against sustainability issues.

It is good to know that the efforts made by the Land Administration and Management Project (LAMP) is already resulting to some tangible outcomes including the renewed interests and priorities by the government and legislators as manifested through policy and legislative changes and financial investments; implementation of education, capacity building and change management strategies; and passage of regulatory frameworks which will ensure the institutionalization of the reforms. Indeed, even if it is a long and enduring process, there is still hope in seeing the light at the end of the tunnel. A caution, however, was put forward by Antonio (2007), ‘...new policy paradigm is difficult to implement for the reason that wealth disparities are too huge to begin with aside from its inherent complexities and complex institutional arrangements. It is always a rule rather than an exemption that genuine reforms or policy changes are always clothed with “malice” and “hidden interests” by the wealthy. Laws and regulations are always with loopholes and/or not funded and reform implementation are always deferred, delayed and in worst cases, not implemented at all.’

The next step is about sustaining the reform initiatives. If the question at hand is whether the country can afford to embrace the current system and never seek alternative ways- the answer is rather obvious. The Philippines which is struggling to be one of the economic tigers of Asia cannot afford to lose its focus and do nothing about it. Security of tenure does not only create tensions within the boundaries of a country, it is becoming an international measure for good governance, donors’ criteria for aid and a benchmark of a working economy and social stability. Like any developing countries, the Philippines have no other option but to take the challenges decisively as the issues at hand is already beyond affordability or sustainability issues. It is already a matter of success or failure of the country’s bid for competitiveness in the global economy.

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19/20

Danilo Antonio

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Danilo Antonio is a Programme Officer at Land, Tenure and Property Administration Section (LTPAS) of UN-HABITAT. Among his other functions, he is the over-all coordinator of the Global Land Tool Network (GLTN) - a global partnership of key international actors working together to address land tenure and land reform issues primarily through the development of pro-poor and gendered land tools (more information at [www.gltm.net](http://www.gltm.net)). He has completed his Master of Science on Land Management and Land Tenure with 'High Distinction' at Technische Universitaet Muenchen, Germany. His thesis, '*Intermediate Land Tenure Instruments for the Urban Poor: Concepts and Realities - The Case of Land Proclamations in the Philippines*' was awarded 'Best Thesis' by the Masters' Programme of the University in 2007. As a public servant for 15 years, he has been a key driver of change and reform of the Philippines' land tenure, administration and management system particularly through his previous senior positions to the World Bank-AusAID assisted Land Administration and Management Program (LAMP). He has been a trainer and a lecturer at the Geodetic Engineering Department of FEATI University, Philippines. Also, he has contributed to land sector reforms in the Philippines in the areas of professional development, training and capacity building, institutional development and change management.

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