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# **Improving Land Sector Governance in the Philippines: Synthesis Report**

## **Implementation of Land Governance Assessment Framework (LGAF)**



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## LIST OF ACRONYMS

A & D	Alienable and disposable
ADB	Asian Development Bank
ADSDPP	ancestral domain sustainable development and protection plan
ARBs	agrarian reform beneficiaries
ARMM	Autonomous Region for Muslim Mindanao
BARC	Barangay Agrarian Reform Council
BIR	Bureau of Internal Revenue
BJS	Barangay Justice System
BLGF	Bureau of Local Government Finance
CA	Commonwealth Act
CADT	Certificate of Ancestral Domain Title
CALT	Certificates of Ancestral Land Title
CARP	Comprehensive Agrarian Reform Program
CBD	Convention on Biodiversity
CITES	Convention on International Trade of Endangered Species
CLOA	certificate of land ownership award
CLUP	comprehensive land use plan
CMP	Community Mortgage Program
COA	Commission on Audit
CoP	Convention of the Parties
DA	Department of Agriculture
DAO	Department Administrative Order
DAR	Department of Agrarian Reform
DENR	Department of Environment and Natural Resources
DILG	Department of Interior and Local Government
DoF	Department of Finance
DoJ	Department of Justice
ECC	Environmental Clearance Certificate
EIA	Environmental Impact Assessment
FBs	famer beneficiaries
FLUP	forest land use plan
FP	Free Patent
FPIC	Free Prior and Informed Consent
GDP	gross domestic product
HLURB	Housing and Land Use Regulatory Board
HP	Homestead Patent
HUCs	highly urbanized cities
HUDC	Housing and Urban Development Council
IPs	indigenous peoples
IPRA	Indigenous Peoples Rights Act
IRA	internal revenue allotment
JAO	Joint Administrative Order
JFPR	Japan Fund for Poverty Reduction

KBAs	key biodiversity areas
LA	land administration
LAMP	Land Administration and Management Project
LAM	land administration and management
LAMS	land administration and management system
LARA	Land Administration Reform Act
LETS, Inc.	Land Equity Technology Services, Inc.
LGAF	Land Governance Assessment Framework
LGC	Local Government Code
LGUs	local government units
LMB	Land Management Bureau
LRA	Land Registration Authority
LSDF	Lands Sector Development Framework
LSLA	large scale land acquisition
LTCP	Land Titling Computerization Project
LVT	land valuation and taxation
MSA	Miscellaneous Sales Agreement
NCIP	National Commission on Indigenous Peoples
NHA	National Housing Authority
NHMFC	National Home Mortgage Finance Corporation
NIPAS	National Integrated Protected Areas System
NSDI	National Spatial Data Infrastructure
NTRC	National Tax Research Center
OCT	original certificate of title
PADCC	Philippine Agricultural Development and Commercial Corporation
PES	payments for ecosystems services
RDs	Registry of Deeds
REDD+	Reducing Emissions from Deforestation and Degradation
REGALA	Local Government Revenue Generation and Land Administration Reform
RoD	Register of Deeds
RoW	right of way
RPT	real property taxes
RTC	Regional Trial Courts
SMEs	small and medium enterprises
SMVs	schedule of market values
UDHA	Urban Development and Housing Act
UNFCCC	United Nations Framework Convention on Climate Change
VRA	Valuation Reform Act

## ACKNOWLEDGEMENTS

The authors wish to express gratitude to the many experts, government officials, members of NGOs, and the private sector for participating in the panels, technical validation workshop and policy dialogue and in providing valuable information and comments on the study. The strong interest generated through the LGAF process helped make the scorecard truly reflective of the Philippines situation in land governance.

The process was likewise supported by the Department of Environment and Natural Resources, through Undersecretary Adobo, who encouraged the participation of stakeholders in the various workshops. The support of the Department of Finance, through Executive Director of Bureau of Local Government Finance Salvador del Castillo and Undersecretary Jim Paul are likewise appreciated.

This study was supported by the World Bank and executed through the Land Equity Technology Services, Inc. We wish to thank the Bank for this opportunity to be involved in such an important undertaking, as well as for the technical guidance from Dr. Klaus Deininger and Ms. Thea Hilhorst. Mr. Mr. Keith Bell and Ms. Tere Quinones provided valuable comments.

We hope the report will serve as a useful platform for the regular review of the state of governance in the lands sector and as a mechanism to propel land governance in the national agenda. As the current administration continues to place governance as a key priority, and with the recent pronouncement of the President to legislate the Land Administration Reform Bill, we hope the attention and stakeholder engagement that was spurred through the LGAF will be sustained.

For the full report and other information on the LGAF, you may visit the LGAF website at <http://econ.worldbank.org/lgaf>.

## 1.0 INTRODUCTION

Land is considered a vital resource for any nation. It serves as the platform for carrying out social, cultural, and economic activities. Access to land is an important means for promoting growth and equity and for achieving social justice in many countries. The process by which decisions are made regarding access to and use of land, the manner in which those decisions are implemented, and the way that conflicting interests in land are reconciled are crucial in determining whether the country has what it takes to derive the desired benefits from this limited natural capital.

The Philippines began to undertake systematic efforts to address land sector issues in 1998, when a comprehensive assessment was made of how the interrelated issues on land tenure security, land administration systems, property valuation, and institutional arrangements impact the activity of land markets and reduce poverty and economic growth.<sup>1</sup> Two phases of the Land Administration and Management (LAM) Project were implemented following these, including the current modest roll-out of a local government-led model of LAM reforms.

These efforts have made some strides in addressing major capacity and implementation issues and to a limited extent, amended policies, but institutional and policy constraints have continued to affect the potential to achieve greater benefits.

The LGAF therefore was very timely, as the Philippines embark on a serious campaign to improve governance as a key strategy for achieving inclusive growth.

This report represents the summary of the country report that was produced out of the LGAF implementation process in the Philippines. The following section describes the methodology. Section 3 provides a brief overview of the country context, while Section 4 presents the main findings and governance scores. Policy recommendations and conclusions are presented in the final sections.

## 2.0 LGAF METHODOLOGY

The Land Governance and Assessment Framework (LGAF) was developed by the World Bank and its partners to provide a tool for the diagnosis of land governance issues, to establishment of benchmarks, and to monitor progress over time. It comprises a set of detailed indicators to be rated on a scale of pre-coded statements (from good practice to a lack of good governance, A-D). The process helps to establish consensus and priority actions on: (i) gaps in existing evidence; (ii) areas for regulatory or institutional change, piloting of new approaches and interventions to improve land governance on a broader scale; and (iii) criteria to assess the effectiveness of these measures. Thus, the LGAF helps put in place a structure and process to systematically track progress in improving land governance over time.<sup>2</sup>

The country study commenced in December 2012 with the engagement of Land Equity Technology Services, Inc. (LETS, Inc.) as the Country Coordinator. The scope of the Philippines LGAF covered seven modules:

### *Core Modules*

- Legal and Institutional Framework
- Land Use Planning, Management and Taxation
- Management of Public Land
- Public Provision of Land Information

<sup>1</sup> Zakout, W., Gilbert Llanto, et.al. 1998. World Bank Informal Policy Note on the Lands Sector.

<sup>2</sup> Deininger, Klaus; Harris Selod and Anthony Burns. The Land Governance Assessment Framework: Identifying and Monitoring Good Practice in the Land Sector. 2012. The World Bank.

- Dispute Resolution and Conflict Management

*Optional Modules*

- Large-Scale Acquisition of Land Rights
- Forestry

In all, the assessment covered 29 indicators involving 104 dimensions of the LGAF.

Its implementation followed the general steps described in the LGAF Manual, which consist of an expert investigation to prepare background materials and panel briefing notes; panel workshops to review the preliminary scoring by experts; a technical validation workshop to discuss the initial results with stakeholders; and a policy dialogue to present the key findings and recommendations to government officials and other sectors. In all, about 90 individuals from 39 agencies and organizations from academe, private sector, government, NGO groups, Local Government Units (LGU), and the World Bank participated in the LGAF discussions. This report reflects the consensus ratings, as well as the main recommendations resulting from the above process.

### **3.0 OVERVIEW OF LAND POLICY ISSUES AND CURRENT EFFORTS**

#### **3.1 Philippines Background Information**

##### **3.1.1 Economy and Geography**

The Republic of the Philippines is an archipelagic country with a total land area of approximately 30 million hectares, distributed among some 7,100 islands. The country is located around 800 km from mainland Asia and is situated between Taiwan and Borneo. Luzon and Mindanao are the two largest islands.

The country has one of the fastest growing population in the Asian region. Based on the 2010 census, the country's population is 92.33 million, with an annual growth rate of 1.9 percent for the period 2000-2010. By 2040, it is expected that the Philippine population will reach 141.67 million, with a population density of 4.72 persons per hectare, compared to the current density of 3.08.

The population distribution is highly skewed in favor of the key cities and urban areas, which represent 65% of the total population. These areas also experience rapid urbanization, growing at a rate of 2.9% annually. On the other hand, poverty is concentrated in the rural population, which poses additional challenges for planning and budget allocation. The country has a high literacy rate of 98%.

As of 2011, the country has a GDP of US \$ 224.8 Billion and a GNI per capita of US \$ 2210. Foreign direct investment as percentage of GDP is placed at 0.83%. The Philippines achieved lower middle income status quite recently and was given investment grade ratings in 2012. These ratings are expected to further boost investor confidence, create more jobs, and increase property development. On the other hand, these trends are seen to add pressure to food security, land allocation, and the provision of improved platforms for investments. The challenge is to translate these positive developments into the achievement of inclusive growth and the protection of the vulnerable sectors of society. Secure property rights and strong governance are therefore key to sustaining this trend in the medium to long term.

##### **3.1.2 Governance System**

The country is a democratic republic, where the president is the head of state and government. It is governed as a unitary state with the exception of the Autonomous Region of Muslim Mindanao. There are three interdependent branches – the legislative,



executive, and judicial branches. The country's Senate and Congress exercise legislative powers, the president heads the executive branch, and the Supreme Court is the highest judicial body.

The historic EDSA People Power Revolution gave birth to a new Constitution in 1987, signaling greater democratic reforms. These include agrarian reform, urban land reform, and more progressive policies on public participation, recognition of customary rights, and devolution of authorities to local governments.

The Philippines is divided into a hierarchy of local government units (LGUs), with 81 provinces as the primary unit. The provinces are further subdivided into cities and municipalities, which are in turn composed of barangays. The barangay is the smallest local government unit. The Local Government Code of 1991 devolved many functions and responsibilities to LGUs. Among the land related functions of provinces, cities and municipalities include taxation of properties, land use planning and development, and cadastral surveys. LGUs likewise have their own executive and legislative authorities as defined under the Code.

The country is divided into 17 regions, with all provinces grouped into one of 16 regions for administrative convenience. The government bureaucracy works along these regional divides for ease of providing services. The National Capital Region (NCR), however, is divided into four special districts. All regions, except for the Autonomous Region for Muslim Mindanao (ARMM), have no political power.

## **3.2 Land Issues and Land Policy**

### **3.2.1 Land Tenure Typology**

In the Philippines, lands are either public domain (state-owned) or alienable and disposable (A&D). Publicly owned lands include classified forest lands, mineral lands, and national parks (1987 Constitution, Article XII, Section 2), and as such are subject only to usufruct and resource utilization rights under certain conditions (Llanto, 2003). Only A&D lands can be privately owned, (which include agricultural lands and reclassified lands) and privately owned lands (based on State grants or laws passed since colonization). These lands are subject to: 1) purchase, which vests ownership, or 2) lease, which vests only the right to occupy and use for the period agreed upon. In 2003, 64.8% of lands classified as alienable and disposable were privately owned.

Customary ownership rights over ancestral lands are recognized in the Constitution and in the Indigenous Peoples' Rights Act (IPRA). The Supreme Court ruled that colonizers only acquired dominion over unoccupied or unclaimed portions of the Philippine archipelago, and ancestral lands are deemed private lands based on customary or native title outside the scope of the Regalian doctrine.

Aside from ownership, other forms of tenure for which there are laws governing their practice in the Philippines include lease (of land or residential units), usufruct, and cooperative housing. Intermediate or temporary tenure systems are not provided for by law, but are established on the project level. Examples of intermediate tenure instruments that confer use rights and some degree of security of tenure would be the certificates of lot awards issued by the National Housing Authority (NHA) to beneficiary families for units in resettlement projects or areas subject to presidential land proclamations.

**Table 1. Land Tenure Typology in the Philippines**

Tenure Type	Legal Recognition and Characteristics	Remarks
<b>Established Tenure in Private and Public A and D Land</b>		
<p><b>Registered/titled individual property ownership in Urban and Rural Areas</b></p> <p><b>Full freehold</b></p> <ul style="list-style-type: none"> <li>- Judicial Decrees/Titles</li> <li>- Miscellaneous Sales Patents</li> <li>- Residential Free Patents</li> <li>- delayed freehold titles that have matured or prescribed into full freehold</li> </ul> <p><b>Delayed freehold</b></p> <ul style="list-style-type: none"> <li>- Free Patent (Agricultural)</li> <li>- Homestead (Agricultural)</li> <li>- CLOAs (Agricultural – Agrarian Reform)</li> </ul>	<p><u>Legal Recognition:</u> RA 386 as amended (Book II of the Philippine Civil Code – Property Ownership and its Modifications); PD 1529 or the Philippine Land Registration Decree of 1978; CA 141 or the Public Land Act; CA 2259 or the Cadastral Act; RA 6657 or the Comprehensive Agrarian Reform Act; RA 10023 or the Residential Free Patent Act</p> <p><u>Registration/Recording:</u> YES</p> <p><u>Transferability:</u> YES</p> <p>Transferable with no restriction for full freehold.</p> <p>Delayed freehold titles have restriction on transfer and mortgages ranging from 5 to 25 years.</p>	<p>Total A and D lands = 14.19 million ha</p> <p>Estimated population = 58.3 million</p>
<b>Collective CLOAs (Agricultural – Agrarian)</b>	<p><u>Legal Recognition:</u> Republic Act 6657 – Comprehensive Agrarian Reform Law</p> <p><u>Registration/Recording:</u> YES</p> <p><u>Transferability:</u> NO.</p> <p>Can be subdivided into individual CLOAs but process is difficult and complex</p>	
<b>Condominium Titles</b>	<p><u>Legal Recognition:</u> RA 386; PD 1529; RA 4726 or the Philippine Condominium Act of 1966.</p> <p><u>Registration:</u> YES</p> <p><u>Transferability:</u> YES. Subject to certain restrictions on common areas</p>	
<p><b>Customary rights</b></p> <p>Certificates of Ancestral Domain Titles (CADT) issued for communal customary lands</p> <p>Certificates of Ancestral Land Titles (CALT) issued for individual holders</p>	<p><u>Legal Recognition:</u> 1987 Constitution and Indigenous Peoples Rights Act for CADTs</p> <p>Commonwealth Act 141 for CALTs</p> <p><u>Registration/Recording:</u> YES</p> <p><u>Transferability:</u> NO</p>	<p>Estimated area = 7.7 million hectares</p> <p>Estimated population = 12-14 million indigenous peoples</p> <p>Area issued with CADTs = 4.3 M ha</p> <p>Area issued with CALTs = 17,293 ha.</p> <p>Most ancestral domains are within forest lands</p>
<p><b>Unregistered private ownership</b></p> <p>Land which have qualified with the 30 years prescription and occupant have been deemed to have acquired an imperfect title.</p> <p>In the case of Residential Free Patents the prescription period is 10 years.</p>	<p><u>Legal Recognition:</u> RA 386 Book II – Civil Code; CA 141 (Title III, Chapter VIII, Section 65); RA 730; RA 10023 (Residential Free Patent); PD 1529.</p> <p><u>Registration/Recording:</u> Eligible for Registration upon formalization.</p> <p><u>Transferability:</u> Possible. Possessory rights are usually transferred informally, and recognized by law.</p>	Formalization either through judicial or administrative process.
<b>Registered government ownership including insular properties and undisposed friar lands (Special Patents)</b>	<p><u>Legal Recognition:</u> RA 386 Book II – Civil Code</p> <p><u>Registration/Recording:</u> Presidential Proclamation is required before</p>	Since the enactment of RA 10023 in 2010, no government lands have been titled under this provision.

Tenure Type	Legal Recognition and Characteristics	Remarks
	<p>registration.</p> <p><u>Transferability</u>: Possible. Disposition of land titled under special patents require Congressional approval or by LGU Councils</p>	
<b>Temporary or Provisional Tenure</b>		
<b>Leases and rentals in Private Lands</b>	<p><u>Legal Recognition</u>: RA 386 Civil Code Book II and Book IV (Laws on Obligations and Contracts)</p> <p><u>Registration/Recording</u>: Possible</p> <p>Leases can be recorded/annotated in the titles at the registry.</p> <p><u>Transferability</u>: Yes, subject to the lease/rental agreement</p>	There is no requirement and no provision for registration of rentals particularly short term ones.
<b>Leases and Rental in government Lands</b>	<p><u>Legal Recognition</u>: RA 386 Civil Code Book II and Book IV</p> <p><u>Registration/Recording</u>: Possible</p> <p><u>Transferability</u>: Possible.</p>	Most government lands are unregistered
<b>Occupation in lands of the public domain</b>	<p><u>Legal Recognition</u>: PD 705 (Forestry Reform Code); NIPAS Act</p> <p><u>Registration/Recording</u> : with DENR</p> <p><u>Transferrability</u>: Not Possible</p>	<p>Government grants long term tenure instruments to protected areas and forest lands</p> <p>Total area: 15.05 million ha; of which 4.1 million are without tenurial instruments (open access)</p> <p>Estimated population: 20 million</p>
<b>Emerging Tenure</b>		
<b>Occupation in unclassified public lands</b>	<p><u>Legal Recognition</u>: None, until the land is classified either as A&amp;D or as forestland then the appropriate tenurial instrument can be issued as appropriate</p> <p><u>Registration/Recording</u>: No, until classified and formalized</p> <p><u>Transferability</u>: No, unless formalized</p>	<p>There are about 760,000 hectares of unclassified lands</p> <p>There are no known estimates of population living in these lands</p>
<b>Informal occupation and use in privately owned and government lands (informal settlement)</b>	<p><u>Legal Recognition</u>: None. But formalization possible pursuant to the UDHA Law</p> <p><u>Registration/Recording</u>: No</p> <p><u>Transferability</u>: No.</p>	Estimated Population: 9 million (2011)

### 3.2.2 History and Current Status of Land Policies

More than three centuries of Spanish occupation of the Philippines has created large disparities in land ownership. Under this rule, the concept of communal use was replaced with the concept of Regalian Doctrine<sup>3</sup> and private individual ownership of lands through the adoption of the Law of the Indies and Maura Law or the Spanish Mortgage Law. During this period, there was massive disenfranchisement of land when the Spanish crown issued royal land grants to colonists who developed large plantations in Luzon, then the nation's heartland. Filipino landowners were

<sup>3</sup> Also referred to as *jura regalia*, it is the legal concept employed by the Spanish Crown in claiming exclusive dominion over the Philippine archipelago upon conquest in 1521. Under this doctrine, title to all lands became vested in the Crown, and private ownership was acquired only through royal grants or decrees.

dispossessed and their tenant farmers were placed under the authority of new landlords. Such large inequality, accompanied by oppression, fueled the revolt in the Philippines against the Spanish rule.

During the American regime, Filipinos were given greater responsibility for governing their own land. Many Philippine officials replaced Spanish haciendas with their own large plantations, thus perpetuating the inequality in land ownership. The US government attempted to address this land tenure problem through redistribution of many large parcels of church-owned land that had been expropriated by the Spanish in the 16<sup>th</sup> century through public offerings for sale, in what are now termed as friar lands. However, this program failed to transfer land ownership to the farmers but allowed few Filipinos with resources to increase their landholdings. Thus, this had the effect of prolonging the landlord-tenant relationship that had become synonymous with Philippine agriculture.<sup>4</sup>

Subsequent political changes did little to alleviate the basic Philippine problems of poverty and land tenure. Partly due to its historically high inequality there has long been intermittent incidence of peasant unrest and rural insurgencies in the Philippines. As a result, the issue of land reform (or 'agrarian reform' as more commonly called in the Philippines, of which land reform constitutes the major part) has continuously been on political agenda at least since the early part of the twentieth century.<sup>5</sup>

Policies enacted by the Philippines in the 19<sup>th</sup> century were all directed at dismantling the skewed distribution of land, and the formalization of land rights but still following much of the Regalian Doctrine introduced under the Spanish era.

Subsequent policies include the Land Registration Act of 1902; the Cadastral Act of 1913; and the Public Land Act of 1936. These policies strengthened the concept of private ownership of what are called alienable and disposable lands (A and D). On the other hand, the Regalian Doctrine was further carried in the 1987 Constitution that upheld that all lands belong to the state unless alienated. This explains the large expanse of public lands that are under the management of government instrumentalities. Perhaps the key exception to this was the Indigenous Peoples Rights Act, which confirmed that lands held under customary law, belong to the indigenous peoples, and were not considered public.

The historic EDSA People Power revolution, paved the way for bolder reforms in land redistribution. These include the 1988 Comprehensive Agrarian Reform Law (CARL) and the 1992 Urban Development and Housing Act (UDHA). The CARL broadened the scope of rural land reform by including private and public agricultural lands regardless of crops and tenure arrangements, and by providing for support services to agrarian reform beneficiaries, including infrastructure, capability-building, and credit/marketing assistance. Lands were to be distributed to landless farmers and farm workers within a period of 10 years, but when this was not achieved, the law was extended for another 10 years, and then again extended until 2014. To date, land reform in the Philippines is still an unfinished business, with a commitment to complete land redistribution under the term of President Aquino, which runs until 2016.

The UDHA established the legal framework for urban land reform and housing for informal settlers, slum dwellers and other underprivileged. Key provisions include the

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<sup>4</sup> Greenberg, Lawrence, 1987. **A Case Study of a Successful Anti-Insurgency Operation in the Philippines, 1946-1955.** (<http://www.history.army.mil/books/coldwar/huk/ch1.htm>). Analysis Branch U.S. Army Center of Military History Washington, D.C., 1987.

<sup>5</sup> Fuwa, Nobuhiko, 2000. **Politics and Economics of Land Reform in the Philippines: A Survey.** A background paper prepared for a World Bank Study, Dynamism of Rural Sector Growth: Policy Lessons from East Asian Countries. (<http://www.h.chiba-u.ac.jp/mkt/LANDREF.pdf>)

prohibition on summary evictions and demolition of dwellings without due process and adequate resettlement, and the provision of government loans to low-income households through the Community Mortgage Program.

Further reforms continued in 2010, when Congress passed Republic Act 10023, aiming to facilitate the registration of residential lands in areas which have been classified as public alienable and disposable lands. The law allows the issuance of a free patent requiring only 10 years of actual occupation. It covers all lands zoned as residential areas, including town sites and military reservations. This law can facilitate the poor people's access to untitled land in the urbanizing areas.

A more comprehensive response to land administration and management issues was undertaken in 1998; when the DENR sought the assistance of the World Bank to carry out a sector review. The joint government and expert group produced a report called the Informal Policy Note, which outlined the key issues and the priority actions that required attention. A result of this partnership is the implementation of the first phase of Land Administration and Management Project (LAMP1) in 2001. Since then, the government has been making strides in addressing interrelated issues through the testing of cost effective procedures, policy studies, and pilots of innovative approaches.

The expected completion of land redistribution under the CARP should effectively transfer lands to the actual tillers, and the same time removes the uncertainties in the rural land market. Concomitant with this is an institutional study on a post-CARP scenario to determine the most appropriate role of rural development agencies upon the completion of redistribution.

There is currently an active debate on a National Land Use Act policy that was almost legislated by the end of Congress' session in June 2012. This has been a two decades' old proposal to ensure the proper allocation of land to various uses and to guarantee that land conversion and development are guided by a framework to meet the country's long term requirements for food security, settlements, industrial and economic development, among others.

A long process towards the harmonization of implementing policies and procedures of DENR, DAR, and DoJ/LRA in the issuance of tenurial instruments in public lands was completed in 2012, leading to a Joint Administrative Order.

Following the lessons from LAMP1, which was carried out from the period 2001 to 2005,<sup>6</sup> the second phase of LAMP is nearing completion, poised to implement the roll out of land administration and management systems (LAMS) to computerize the title and survey records in DENR. The project has also successfully rolled out systematic titling in three provinces, using more streamlined approaches.

There is currently a growing uptake by LGUs in land administration and management. As evidenced by experiences from LAMP2 and the ADB REGALA Project, LGUs are able to link improved tenure security with better land use planning and increased local revenues. These initiatives have also resulted in strengthening local governance.

Two major bills have been submitted to Congress as a result of LAMP's work: the Land Administration Reforms Act (LARA) and the Property Valuation Reforms Act (VRA). These are meant to address the systemic constraints affecting service delivery in land administration and in the adoption of market based valuation of properties by LGUs, respectively. In the July 2013 State of the Nation Address, President Aquino strongly endorsed the approval of the LARA Bill.

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<sup>6</sup> The first phase of LAMP, or otherwise known as LAMP Learning and Innovation Loan, was funded by the World Bank; in parallel with the AusAID funded technical assistance named Philippine – Australia LAMP.

A Lands Sector Development Framework (LSDF) was completed, which provides a roadmap for a 20-year program on LAM reform and implementation. This was submitted to NEDA, and portions have been taken up by the Philippine Development Plan (PDP).

### **3.2.3 Land Management Institutions**

There are a number of government agencies involved in land administration and management. The Department of Environment and Natural Resources (DENR) undertakes major land classification of all lands into either public domain or alienable and disposable. Once classified as A and D, the agency is also involved in the conduct of cadastral surveys and in the titling of public lands through administrative procedures. For lands classified as part of the public domain, the same agency manages the issuance of tenure instruments over forest lands and protected areas, including the granting of resource use rights for forest products and mineral explorations through permits and leases.

The Land Registration Authority, through its registry offices, registers all titles and transactions thereon. It embarked on a computerization project in 2008, which aimed at capturing all records and computerizing transactions and services. However, the LRA is also involved in the review and approval of subdivision surveys, which overlaps with the functions of DENR, and in original titling activities through judicial processes.

The Department of Agrarian Reform is the main agency entrusted with land distribution as part of the government's agrarian justice reforms. It is also involved in the issuance of homestead patents and in the distribution of Certificates of Land Ownership Award (CLOAs) to its farmer beneficiaries on the same lands that are being titled by the DENR. There have also been cases of issuance of CLOAs in ancestral domains.

The National Commission on Indigenous Peoples (NCIP) is responsible for promoting the welfare of indigenous peoples in the Philippines. Its key land management functions relate to the survey, delineation, and mapping of ancestral domain claims and to the issuance of certificates of ancestral domain titles (CADTs). These are registered at the Registry of Deeds (RoDs). NCIP also handles resolution of conflicts among IP groups, particularly boundary disputes which prevent the processing of CADTs. Most of the ancestral domains are located within forest lands; the lack of coordination between NCIP and DENR has resulted in the issuance of tenure instruments overlapping with CADTs. Recently, the DENR, NCIP, DAR and LRA have issued a joint administrative order improving procedures for mapping, surveying and approval of titles, tenurial instruments to address conflicts and overlaps.

The key land administration functions of LGUs are property tax assessment, valuation, and collection, following the market based methods prescribed by BLGF. Thus, they have a strong role to play in the management of property records; they are highly dependent on the cadastral records of DENR to complete their land parcel inventories, as well as information on new subdivision surveys to update property ownership. They use this information for proper land use planning and management. They are also dependent on LRA/RoD to provide recent information on transfers in property ownership to keep their tax records up to date.. Recently, the LGUs have been involved in land titling activities in partnership with DENR and in more aggressive tax mapping and updating through greater sharing of land records between DENR and LRA/RoD. This has been a continuing concern of LGUs.. The Local Government Code devolved the power to exercise eminent domain, handed down from the national government. Still, much of the public land management responsibilities, including land administration functions, were retained by the national government.

## 4.0 ASSESSMENT OF LAND GOVERNANCE

The findings confirm that the Philippines has fairly progressive policies on land distribution, tenure regularization, indigenous peoples rights, urban shelter reform, dispute resolution. The devolution to local governments has likewise provided a legal framework that allowed for connecting tenure regularization, land use planning and resource mobilization at the local government level. The progressive drive towards good governance has enabled public display of information and reports, and streamlined processes through computerization. The strong democratic space prevailing in the country owing to decades of political reforms has nurtured public participation in policy development and review.

However, there remain huge gaps in implementation, thus resulting in limited coverage and prolonged completion of many programs. The institutional overlaps that have persisted for many years have remained unresolved, thus creating negative impacts on service delivery.

This section provides a summary of the LGAF findings on the seven thematic areas involving 29 indicators and 104 dimensions.

### 4.1 Legal and Institutional Framework

#### 4.1.1 LGI 1 - Recognition of Rights

LGI 1 - Recognition of Rights			A	B	C	D	LGAF Findings
1	i	Land tenure rights recognition (rural)					Existing legal framework recognizes rights held by more than 90% of the rural population, either through customary or statutory tenure regimes.
1	ii	Land tenure rights recognition (urban)					Existing legal framework recognizes rights held by 70% - 90% of the urban population, either through customary or statutory tenure regimes.
1	iii	Rural group rights recognition					The tenure of most groups in rural areas is formally recognized and clear regulations exist regarding groups' internal organization and legal representation.
1	iv	Urban group rights recognition in informal areas					Group tenure in informal urban areas is formally recognized and clear regulations exist regarding the internal organization and legal representation of groups.
1	v	Opportunities for tenure individualization					If desirable, the law provides opportunities for those holding land under customary, group, or collective tenures to fully or partially individualize land ownership/use. Procedures to do so are affordable and include basic safeguards against abuse but are not always followed in practice and are often applied in a discretionary manner.

The country has a strong legal framework for rural and urban individual land tenure rights recognition through various modes of titling, which essentially confirm long held rights for almost all members of the population. However, in the urban areas, there is no policy for recognition of informal settler rights.

Similarly, existing policies and procedures exist for the recognition of both urban and rural group rights. In the former, the mode is through collective ownership via the Community Mortgage Program (CMP) under the Urban Development and Housing Act

(UDHA). In the rural areas, group rights recognition is through the collective CLOAs and communal tenure in forest lands.

While opportunities for tenure individualization exist in both urban and rural areas, these are costly and take a long time to complete. Subdivision of CLOAs are constrained by the inclusion and exclusion process and by the cost and time to complete subdivision surveys. In the case of CMPs, completion of payments is required before collective rights are divided.

#### 4.1.2 LGI 2 - Enforcement of Rights

Enforcement of Rights			A	B	C	D	LGAF Findings
2	i	Surveying/mapping and registration of claims on communal or indigenous land					40-70% of the area under communal or indigenous land has boundaries demarcated and surveyed and associated claims registered.
2	ii	Registration of individually held land in rural areas					Between 50% and 70% of individual land in rural areas is formally registered
2	iii	Registration of individually held land in urban areas					Between 50% and 70% of individual land in urban areas are formally registered.
2	iv	Women's rights are recognized in practice by the formal system (urban/rural)					Between 15% and 35% of land registered to physical persons is registered in the name of women either individually or jointly.
2	v	Condominium regime that provides for appropriate management of common property					Common property under condominiums is recognized and there are clear provisions in the law to establish arrangements for the management and maintenance of this common property.
2	vi	Compensation for loss of rights due to land use changes					
2	via	Rural to urban conversion					Where people lose rights as a result of land use change outside the expropriation process, compensation in cash or in kind is paid such that these people have comparable assets and can continue to maintain prior social and economic status.
2	vib	Establishment of national parks/protected areas					Where people lose rights as a result of land use change outside the expropriation process, compensation in cash or in kind is paid such that these people have comparable assets but cannot continue to maintain prior social and economic status.

The IPRA law is a milestone policy which provides the framework for surveying/mapping and registration of claims on communal land. Even so, the country's efforts at recognition, mapping, and registration of ancestral domains are still considered second best practice, with only 56% completion. In the face of continuing threats to ancestral lands, this is considered an urgent priority. These threats include unauthorized mining, conversion into palm oil and rubber plantations, and titling by other agencies.

While existing policies recognize the ownership rights of women, forms and records do not reflect gender data. This is one thing that can be improved through modifications of



titling and judicial forms and through the appropriate reporting and monitoring of gender-disaggregated ownership and other indicators.

Since 1966, the country has enacted a Condominium Law provides for appropriate management of common property.

Policies and procedures allow for disturbance compensation for land use changes owing to rural to urban conversion, but not for the establishment of national parks or protected areas. Because protected areas are established mainly on public lands, the country lacks policies and procedures for compensation for loss of rights in case of establishment of protected areas. As a matter of procedure, only prior rights are recognized.

A key weakness in enforcement of rights is the huge proportion of untitled urban/residential and rural properties, estimated at 11M parcels. This situation constrains the effective functioning of the land market and affects investments in property development. Moreover, it exposes the property owners, particularly the poor, to undue risks.

#### 4.1.3 LGI 3 - Mechanisms for recognition of rights

Mechanisms for Recognition			A	B	C	D	LGAF Findings
3	i	Use of non-documentary forms of evidence to recognize rights					Non-documentary forms of evidence are used to obtain recognition of a claim to property along with other documents (e.g. tax receipts or informal purchase notes) when other forms of evidence are not available. They have about the same strength as the provided documents.
3	ii	Formal recognition of long-term, unchallenged possession					Legislation exists to formally recognize long-term, unchallenged possession and this applies to both public and private land although different rules may apply.
3	iii	First-time registration on demand is not restricted by inability to pay formal fees					
	iiia	Under Free Patent mode – RA 10023					The costs for first time sporadic registration for a typical urban property does not exceed 0.5% of the property value.
	iiib	Under the Miscellaneous Sales Patent (MSP) mode					The costs for first time sporadic registration for a typical urban property does not exceed 2% of the property value.
	iiic	Under the judicial titling mode					The costs for first time sporadic registration for a typical urban property exceeds 5% of the property value.
3	iv	First-time registration does not entail significant informal fees <sup>7</sup>					B – There are informal fees that need to be paid to effect first registration, but the level of informal fees is significantly less than the formal fees. C – There are informal fees that need

<sup>7</sup> Rating is between B and C. Amount of informal fees is “not significantly less” than formal fees but generally not equal to the formal fees. **The score given therefore was between B and C.**

Mechanisms for Recognition			A	B	C	D	LGAF Findings
							to be paid to effect first registration and the level of informal fees is about the same as the formal fees.
3	v	Formalization of residential housing is feasible and affordable.					The requirements for formalizing housing in urban areas are not clear, straight-forward, or affordable but many applicants from informal areas are managing to satisfy the requirements.
3	vi	Efficient and transparent process to formally recognize long-term unchallenged possession					There is a clear, practical process for the formal recognition of possession and this process is implemented effectively, consistently and transparently.

Existing laws and procedures make good use of non-documentary forms of evidence to recognize rights, alongside other legal documents to support possession.

There are in the Philippines a number of laws that allow recognition of long term, unchallenged possession. These are Commonwealth Act 141, Republic Act 636, Indigenous Peoples Rights Act (IPRA), and Republic Act 10023. Modes of first time registration prescribe a range of formal fees, with the Free Patent procedures considered the most affordable, but more costly under Miscellaneous Sales and Judicial Mode. These two titling options are less preferred anyway, despite the full rights afforded under the judicially issued titles. There is a potential for greater coverage of urban titling through Miscellaneous Sales if land appraisal procedures can be revised to make these more affordable.

Despite the affordability of formal fees, there are still informal fees paid for first time registration, but the level is not as high as formal fees. However, based on studies in three provinces, the practice is very prevalent. More comprehensive study on extent of informal fees involved is needed to provide better indication of how widespread this practice is in other parts of the Philippines.

Formalization of residential housing is very costly and entails too many delays, leading to growth in informality. Studies have shown that among the processes for securing rights for informal settlers, the most preferred mode is still through acquisition of properties where they reside, thus entailing negotiations with private property owners. Difficulties in access to reliable records have been identified as one of the greatest stumbling blocks for such negotiations to take place, in many cases spanning decades. Such situation breeds corruption and encourages unscrupulous practices by those who profit from the poor state of land records.

#### 4.1.4 LGI 4 - Restrictions on Rights

Restrictions on Rights			A	B	C	D	LGAF Findings
4	i	Restrictions regarding urban land use, ownership and transferability					There are a series of regulations that are for the most part justified on the basis of overall public interest but that are not enforced.
4	ii	Restrictions regarding rural land use, ownership and transferability					There are a series of regulations that are for the most part justified on the basis of overall public interest and that are enforced.

There are restrictions on urban land use, ownership and transferability that are justified but not enforced. Examples of these involve restrictions on foreign ownership, the rent control law, and plot sizes in low cost housing. There is thus a need to review these restrictions to determine if they meet their purported objectives.

On the other hand, rural land use, ownership, and transferability restrictions are considered justified for the most part on the basis of public interest, and are enforced. These include ownership limits of agricultural land with the purpose of achieving social justice objectives and review processes for rural to urban conversion.

#### 4.1.5 LGI 5 - Clarity of Institutional Mandates

Clarity of Mandates			A	B	C	D	LGAF Findings
5	i	Separation of institutional roles					In situations that can entail conflicts of interest or abuse (e.g. transfers of land rights) there is some separation in the roles of policy formulation, implementation of policy through land management and administration and the arbitration of any disputes that may arise as a result of implementation of policy but there are overlapping and conflicting responsibilities that lead to frequent problems.
5	ii	Institutional overlap					The mandated responsibilities of the various authorities dealing with land administration issues are defined but institutional overlap with those of other land sector agencies and inconsistency is a problem.
5	iii	Administrative overlap					Division of land-related responsibilities between the different levels of administration and government is clear with minor overlaps
5	iv	Information sharing					Information related to rights in land is available to interested institutions and although this information is available at reasonable cost, it is not readily accessible as the information is not maintained in a uniform way.

There are huge flaws in the institutional arrangements for land governance. Most agencies by mandate have internal consistencies such that they have multiple roles in policy formulation, program implementation, and arbitration of disputes. However, there is minimal vertical overlap within key agencies, and between national and local government agencies.

A key concern is the strong horizontal overlaps in mandates of key land agencies, which affect efficiency in service delivery, prevents access to complete land records, generates confusion among the public, results in long standing disputes, and provides fertile ground for syndicates and informal payments. What is worse, most of the 'victims' are the poor and uneducated who are not familiar with the complex procedures and laws within the agencies. Classic examples include duplication in the issuance of tenure instruments such as CLOAs in ancestral domains and public A and D lands, issuance of duplicate titles (judicial and Free Patent) on the same properties, and duplicate roles between LRA and DENR in the review and approval of subdivision surveys, among others.

In terms of land management, the situation is the same. While the main responsibility for public land management rest with DENR, other agencies also have some interests in lands of the public domain. These include DAR, Department of Energy, National Commission on Indigenous Peoples (NCIP), and the many Bureaus under the DENR.

This has resulted in overlaps in the issuance of tenure instruments and permits, thus causing a lot of conflicts and incompatible uses.

There is inadequate sharing of land information among agencies. The key land agencies maintaining records have completely different references which makes cross referencing impossible. The DENR maintains titles and surveys based on survey numbers, the LRA and RoD keep their records based on title numbers, while the LGUs use tax identification number as their reference. This has resulted in difficulties by users to validate information on a parcel; thus creating opportunities for improper practices.

#### 4.1.6 LGI 6 - Participation and Equity in Land Policies

Equity and Non-Discrimination			A	B	C	D	LGAF Findings
6	i	Clear land policy developed in a participatory manner					A comprehensive policy exists or can be inferred by the existing legislation. Land policy decisions that affect sections of the community are based on consultation with those affected and their feedback on the resulting policy is sought and incorporated in the resulting policy.
6	ii	Meaningful incorporation of equity goals					Land policies incorporate some equity objectives but these are not regularly and meaningfully monitored.
6	iii	Policy for implementation is costed, matched with the benefits and is adequately resourced					The implementation of land policy is not fully costed and/or to implement the policy there are serious inadequacies in at least one area of budget, resources or institutional capacity.
6	iv	Regular and public reports indicating progress in policy implementation					Formal land institutions report on land policy implementation in a regular, meaningful, and comprehensive way with reports being publicly accessible

The Philippines has clear land policies enshrined in the Philippine Constitution and further articulated in various laws. These include the CARP to promote social justice reforms; the IPRA to recognize customary rights; CA 141, RA 636, and RA 10023 to recognize long term possession; and the UDHA to implement urban land reform; among others. The country's adherence to democratic principles likewise provides an excellent environment for public participation in land policy formulation.

While there are strong statements of equity objectives in the country's land policies, most of these, except for CARP, are not regularly and meaningfully monitored. The panel recommended to institutionalize mechanisms for regular and meaningful monitoring of progress and impact of land policies into equity goals/objectives, either through NEDA/PIDS, or appropriate institution.

Likewise, except for CARP, there are serious inadequacies in budget, resources, and institutional capacity to implement land policies. Examples of these are the policies on titling which have been in effect for several decades now, but remain incomplete due to lack of adequate funding. The IPRA law likewise did not enjoy the benefit of having sufficient resources to address the demands for institutional development and support to the speedy completion of mapping and registration of ancestral domain claims.

Despite the above limitations, there are regular and public reports indicating progress in policy implementation. This is mandated of all agencies of government, following recent moves to improve transparency in public provision.

## 4.2 Land Use Planning, Management and Taxation

### 4.2.1 LGI 7 - Transparency of Land Use Restrictions

Transparency of Land Use			A	B	C	D	LGAF Findings
7	i	In urban areas, land use plans and changes to these are based on public input					Public input is sought in preparing and amending land use plans and the public responses are used by the public body responsible for finalizing the new public plans, but the process for doing this is unclear or the report is not publicly accessible.
7	ii	In rural areas, land use plans and changes to these are based on public input					Public input is sought in preparing and amending land use plans and the public responses are used by the public body responsible for finalizing the new public plans, but the process for doing this is unclear or the report is not publicly accessible.
7	iii	Public capture of benefits arising from changes in permitted land use					Mechanisms to allow the public to capture significant share of the gains from changing land use are rarely used or applied in a discretionary manner.
7	iv	Speed of land use change					Between 30% and 50% of the land that has had a change in land use assignment in the past 3 years has changed to the destined use.

While existing guidelines provide for public participation in urban CLUP preparation, this is not consistently practiced, and is usually at the end of the process. In the same way, in rural areas, there are varying degrees of public input in land classification, forest boundary delineation, forest and use planning, and PA management planning.

LGUs are not proactive in land use planning. Instead, changes in land use planning are mainly driven by national infrastructure projects and investments by private sector. Thus most of the country's major urban centers suffer from uncontrolled growth and expansion.

The implementation of relevant policies to enable public capture of benefits arising from changes in permitted land use has largely been ignored, thereby resulting in some members of society to privately gain from such investments. At best, such benefits are captured in changes in property tax assessment, but because the LGU schedule of market values is way below the true market values and almost always out of date, this does not materialize. Full implementation of this law will also prevent those with vested interests to unduly influence the location of major public infrastructure projects for their benefit. In a similar way, those whose properties are expropriated or those affected by ROW or other government projects are not compensated fairly.

### 4.2.2 LGI 8 - Efficiency of land use planning

Efficiency of Land Use Planning			A	B	C	D	LGAF Findings
8	i	Process for planned urban development in the largest city					In the largest city in the country, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban spatial expansion occurs in an ad hoc manner with infrastructure provided some time after urbanization.
8	ii	Process for planned urban development in the 4 largest cities					In the four major cities in the country, while a hierarchy of regional/detailed land use plans is specified by law, in practice urban

Efficiency of Land Use Planning			A	B	C	D	LGAF Findings
		(exc. largest)					development occurs in an ad hoc manner with infrastructure provided some time after urbanization
8	iii	Ability of urban planning to cope with urban growth					In the largest city in the country, the urban planning process/authority is struggling to cope with the increasing demand for serviced units/land as evidenced by the fact that most new dwellings are informal
8	iv	Plot size adherence					Existing requirements for residential plot sizes are met between 50% and 70% of plots.
8	v	Use plans for specific land classes (forest, pastures etc.) are in line with use					The share of land set aside for specific use that is used for a non-specified purpose in contravention of existing regulations is between 30% and 50%.

Urban land use planning is not effective in controlling urban growth and spatial development. Urban growth is happening in an ad hoc manner in most of the urban centers of the Philippines, signifying a breakdown in urban planning. This creates pressure on the location of government infrastructure developments and service provision for the growing city population. Unplanned development also creates inefficiencies in land use allocation, such that prime properties can be subject to informal settlements and other low value uses.

The situation holds true for both the largest city and the next four largest cities in the Philippines. A key issue is that LGUs are not fully utilizing their regulatory powers in land use through the zoning process. The situation has become an excellent ground for speculation and elite capture of benefits from land use and zoning, particularly in rapidly urbanizing areas in key cities of the Philippines.

Urban planning is not able to cope with urban growth. A unique feature of urbanization in the Philippines is that while there is robust residential property development in Manila and key cities, particularly in construction of condominiums, there remains a huge unmet demand for housing and thus growing informality in the urban areas. The current boom in condominium development caters to the upper middle to high- income classes and responds more to speculative demands for investment.

There are wide variations between allowed and actual residential plot sizes due to lack of monitoring. It is a known fact that not all builders secure the necessary clearances and permits, and local building officials are not known to conduct field inspections to ferret out violations. Hence the incidence of violations may be significant. Variations across cities may be more in degree than in kind.

There are a large proportion of land (forests, foreshore) whose actual use are not in line with use plans. There was outright consensus among panel members that in the case of areas under the public domain – forest lands and protected areas – use plans are not in line with actual use. This is due to the fact that classifications of land are legal statutes following technical criteria and are not necessarily based on actual use.

#### 4.2.3 LGI 9 - Speed and Predictability of enforcement of restricted land uses

Speed and Predictability			A	B	C	D	LGAF Findings
9	i	Applications for building permits for residential dwellings are affordable and processed in a non-discretionary manner.					Requirements to obtain a building permit are technically justified, affordable, and clearly disseminated.
9	ii	Time required to obtain a					All applications for building permits

Speed and Predictability			A	B	C	D	LGAF Findings
		building permit for a residential dwelling					receive a decision within 3 months

Residential building permits are granted promptly and transparently. The requirements by LGUs for the processing of building permits essentially follow the provisions of the National Building Code. The length of time to issue the permits likewise depends on the completion of the requirements submitted by the applicant. In cases where the requirements are complete, the issuance of the permit does not take two weeks, which is well within the best practice standards of three months.

The fees likewise are standard across all LGUs, following the fee schedule issued regularly by the DPWH. These requirements and fees are publicly available in the LGU offices, and in the websites.

#### 4.2.4 LGI 10 - Transparency of valuations

Transparency of Valuation			A	B	C	D	LGAF Findings
10	i	Clear process of property valuation					The assessment of land/property for tax purposes is based on market prices, but there are significant differences between recorded values and market prices across different uses and types of users or valuation rolls are not updated regularly or frequently (greater than every 5 years).
10	ii	Public availability of valuation rolls					There is a policy that valuation rolls be publicly accessible and this policy is effective for all properties that are considered for taxation.

Current practices have resulted in lost opportunities for the capture of appropriate levels of revenues from property taxes which could have been used by LGUs to finance local development projects.

There are clear policies and processes for property valuation in the Philippines. Market based valuation is provided for under the Local Government Code, and supplemented by a Mass Appraisal Guidebook (MAG) issued recently by the Bureau of Local Government Finance (BLGF). However, LGUs do not use these and/or have no capacities to carry out the prescribed procedures. Thus, in the Philippines, only six LGUs have applied market based valuation of properties and used these in their updating of SMVs.

Very few LGUs have complied with the mandatory provision for regular updating of SMVs every three years. As of June 2013, 62 out of 80 provinces and 114 out of 144 cities are in default in their SMV updating.

The above factors work in combination to result in LGU assessed values that are way below the true market values – sometimes the difference is 1000%. As basis for property tax determination, these impact heavily on internal revenue generation capacity by LGUs.

Property tax rolls (i.e., zonal values of the Bureau of Internal Revenues) are publicly available on line. In the case of the local governments, the BLGF has uploaded to its website the SMVs used by LGUs. Anyone can download from the website the scanned copy of the SMV as well as the ordinance that authorized it.

#### 4.2.5 LGI 11 - Tax collection efficiency

Tax Collection Efficiency			A	B	C	D	LGAF Findings
11	i	Exemptions from					The exemptions to the payment of

Tax Collection Efficiency			A	B	C	D	LGAF Findings
		property taxes are justified					land/property taxes are not always clearly based on equity or efficiency grounds and are not always applied in a transparent and consistent manner
11	ii	Property holders liable to pay property tax are listed on the tax roll					Between 50% and 70% of property holder liable for land/property tax are listed on the tax roll.
11	iii	Assessed property taxes are collected					Between 50% and 70% of assessed property taxes are collected

There is wide discretion in the application of exemptions to payments of property taxes. The LGC effectively repealed all RPT exemptions previously given under special laws. It limited the number of properties that will enjoy tax exemption. The exemptions provided in the LGC are clearly based on national development policy and social considerations, in addition to equity and constitutional grounds.

In practice, however, some LGUs resort to the taxation powers vested in them under the LGC to grant exemptions in their desire to attract investments. Giving up revenues in exchange for more economic activities is seen by LGUs as a better policy that can address problems of unemployment and non-utilization of the other resources of the LGU.

A large proportion of property tax payers are not listed on the tax roll. There are a number of reasons behind this. One, most LGUs do not diligently update their tax maps. Second, many of the offices and professionals mandated to provide updated information on properties do not share these data with the LGUs. Third, LGUs depend to a large extent on the property owners to report details of their properties. However, these owners do not provide accurate reports to the Assessors. CARP beneficiaries likewise are not diligent in reporting property transfers of ownership to the LGUs.

Property tax collection efficiency is very low. For the period 2003 to 2010, average real property tax collection by LGUs stood only at 59%. This is the result of the indiscriminate application of property tax exemptions, outdated tax maps and property data by the LGUs, and poor compliance with the regular updating of SMVs. The high dependence of many LGUs on the internal revenue allotment (IRA) likewise creates disincentives to collect property taxes. On the average, provinces and municipalities have an IRA of 80 percent and 76 percent, respectively, of their total budget, while cities have a more balanced ratio (43 percent), based on average consolidated data from 2001-2010.

The above collection record also shows that administrative and judicial remedies provided in the LGC for the collection of delinquent RPT are not rigorously implemented. Sanctions for local officials (primarily the treasurer and his staff) for not collecting the RPT are not utilized.

### 4.3 Management of Public Land

#### 4.3.1 LGI 12 - Justification of public land ownership and management clarity

Identification of Public Land			A	B	C	D	LGAF Findings
12	I	Public land ownership is justified and implemented at the appropriate level of government					Public land ownership is generally justified by the provision of public goods at the appropriate level of government but management may be discretionary
12	ii	Complete recording of publicly held land					More than 50% of public land is clearly identified on the ground or on maps
12	iii	Assignment of					There is enough ambiguity in the



Identification of Public Land			A	B	C	D	LGAF Findings
		management responsibility for public land					assignment of management responsibility of different types of public land to impact to some extent on the management of assets.
12	iv	Resources available to comply with responsibilities					There are significant constraints in the budget and/or human resource capacity but the system makes effective use of limited available resources in managing public lands.
12	v	Inventory of public land is accessible to the public					All the information in the public land inventory is only available for a limited set of public property and there is little or no justification why records are not accessible
12	vi	Key information on land concessions is accessible to the public.					The key information for land allocations (the locality and area of the land allocations, the parties involved and the financial terms of the allocation) is recorded or partially recorded but is not publicly accessible

Public land ownership is justified in most cases by the provision of public goods, but responsibility is often at the wrong level of government. In the Philippines, the government is the biggest landowner, since it manages about half of the country's territory through the issuance of tenure rights and regulation of uses over these areas. However, management of these lands rest mainly with DENR, through the grant of long term agreements with communities for onsite effective management. Resource use and planning is still heavily regulated and subject to changing policies of DENR. This situation has discouraged communities from establishing long-term perennial crops. With no access to loan financing, communities remain dependent on LGUs, DENR, NGOs and donors for support in development activities.

It is essential that greater devolution of management responsibilities be given to LGUs, along with stronger recognition of the role of local communities and other organizations in their management. More than 50% of public land is clearly identified on the ground or on maps. The DENR has been successful in the mapping and demarcation of the country's forest estate. Except in the Autonomous Region of Muslim Mindanao (ARMM), forest boundary delineation for the whole country is completed and now on its final stages of evaluation and in some areas, legislation. In all, about 79,245 km of forest boundaries have been delineated.

Tenured areas within forest lands and protected areas are delineated in maps available within the DENR offices. There is no single reference, however, of all these interests in a single map that is available to the public.

In the case of protected areas, much more needs to be done, such that these are clearly mapped and boundaries properly demarcated. Only 12 of the 113 proclaimed protected areas have fully demarcated boundaries.

There is enough ambiguity in the assignment of management responsibility of different types of public land to impact the management of assets to some extent. Such ambiguity manifests itself in the way inventories of public lands and information on concessions are held. There are inventories and maps of tenure types and resource managers over portions of forest lands in the field offices of DENR. However, these are in various forms, and in most cases are not ground validated. There have also been reports of undue

influence in the forest boundary delineation, such that the validation parties found forest sections that do not meet the prescribed criteria to be released as A and D.

There is no single reference map or database which shows all the interests on the forest lands and protected areas. One has to go to each different database and map to find out all the tenure types and status of a particular forest land or protected area. The same holds true for information on land concessions. These are scattered among the Mines and Geosciences Bureau (MGB) for mining permits and licenses; with the PAWB for protected areas and key biodiversity areas and the permits within; with the Lands Management Bureau for titled and untitled properties as well as public A and D lands; and with the Forest Management Bureau for industrial forest management agreements (IFMA), CBFMA, and other tenure and interests. An added layer would be the CADTs issued by NCIP, energy exploration permits issued by the DoE, and CLOAs issued by DAR.

There are significant constraints in the budget and/or human resource capacity, but the system makes effective use of limited available resources in managing public lands, particularly in PA management. Among the responsibilities, forest management has historically been the recipient of investments focusing on massive reforestation, forest boundary delineation, and the current National Greening Program. The cadastral program has also received huge allocations since 2012, with the aim of completing all unsurveyed areas in the country.

What is needed is attention to the protected area management program, so that the National Integrated Protected Areas System (NIPAS) can be implemented according to the intents of the law. This should boost the efforts towards conservation, protection, rehabilitation, and management of these areas.

Additional support is also required for the NCIP, so that it is able to accelerate the survey, mapping, and registration of CADTs and support the capacity development of IP organizations.

Information in the public land inventory is incomplete. There are inventories and maps of tenure types and resource managers over portions of forest lands in the field offices of DENR. However, these are not readily accessible to the public and seldom available in digital form. Protected areas are also mapped and included in the database of the PAWB.

What is severely lacking is information on public A and D lands such as cadastral maps, as well as the location of titled and untitled properties. This information is crucial for LGUs in their planning functions and in the implementation of their land tenure improvement programs. In most cases, these land related records and information are not properly inventoried in the DENR: many records have been damaged from fires and floods, while some are missing due transfers of offices and removal from the files. The current effort under the additional financing of LAMP2 to inventory and computerize the DENR land records through LAMS would contribute greatly to resolving the situation.

Key information for land allocations/concessions is recorded but is not publicly accessible. In the case of mining concessions and exploration permits, these are uploaded at the MGB website. The PAWB maintains a database of all protected areas. However, the list of Special Use Agreements in Protected Areas (SAPA) and other activities where there are existing Memorandum of Agreements with DENR are maintained at the regional offices. In the case of tenurial instruments in forestlands, these are available at the FMB, with more detailed information at the regional offices. NAMRIA maintains the maps showing the location of forest lands. However, for public alienable and disposable lands and the cadastral maps, this information is not readily

available and one has to go to the different regional offices to locate these and validate on the ground.

Many of the government properties held by the national government agencies and LGUs are not titled, and there is no integrated database which contains all of this information. The opportunity offered by RA 10023 to facilitate the issuance of Special Patents to government properties has not been maximized in view of the lack of implementing guidelines pertinent thereto.

Other public lands include reclaimed areas whose records are maintained by the Public Reclamation Authority (PRA). Such list is not readily available to the public either.

The lack of a comprehensive repository of all these maps and information and lack of access to the public to these data has affected planning by LGUs and others who might have an interest in engaging in joint venture agreements in public lands.

The current efforts of NAMRIA and the DENR regional units in updating, validating, correcting records of the Land Evaluation Parties (LEPs) could help harmonize overlaps and make this information accessible to the public. NAMRIA should also accelerate its master mapping of all information on land concessions by province, city, and municipality for dissemination and use of the public.

#### 4.3.2 LGI 13-14 Justification and fairness of expropriation procedures

Incidence of Expropriation			A	B	C	D	LGAF Findings
13	i	Transfer of expropriated land to private interests					Less than 10% of land expropriated in the past 3 years is used for private purposes.
13	ii	Speed of use of expropriated land					Between 30% and 50% of the land that has been expropriated in the past 3 years has been transferred to its destined use.
<b>Transparency of Procedures</b>							
14	i	Compensation for expropriation of ownership					Where property is expropriated, compensation, in kind or in cash, is paid so that the displaced households have comparable assets but cannot maintain prior social and economic status.
14	ii	Compensation for expropriation of all rights					Compensation, in kind or in cash, is paid for some unregistered rights (such as possession, occupation etc.), however those with other unregistered rights (which may include grazing, access, gathering forest products etc.) are usually not paid compensation.
14	iii	Promptness of compensation					More than 90% of expropriated land owners receive compensation within one year.
14	iv	Independent and accessible avenues for appeal against expropriation					Independent avenues to lodge a complaint against expropriation exist but there are access restrictions (i.e. only accessible by mid-income and wealthy).

There are policies governing expropriations, but the laws are very clear that these cannot be used for private interests.

A large portion of expropriated land (30-50%) in the past 3 years has not been transferred to its destined use due to delays in project approvals, negotiations, and compensation.

The government has no resettlement policy that would define just compensation for socio-economic and income losses (small businesses and commercial establishments) arising from public expropriation proceedings. Existing policies on expropriation are varied and inconsistent. The preparation of resettlement action plans (RAPs) is not supported by a national policy, thus only foreign assisted projects have RAPs by the strength of the loan and grant agreements between the donor and Philippine government. Outside of these, agencies have no legal basis to prepare RAPs and payment of adequate compensation. The use of market values and upfront payment in compensating owners of properties subject of expropriation is only guaranteed in national infrastructure projects, thereby creating an uneven application of fairness in compensation. Other types of projects use only assessed values as basis for compensation and need only to pay 15% of the total value to acquire the property.

Property owners with unregistered rights are not paid compensation. There are no policies to support compensation under expropriation proceedings. This is related to the lack of resettlement policy that should guide all agencies involved in expropriation.

There are independent avenues to lodge complaints against expropriations, but there are restrictions. Court proceedings involve the need to engage lawyers and professional valuers, make it impossible for such avenues to be availed of by the poor and underprivileged.

#### 4.4 Public Provision of Land Information

##### 4.4.1 LGI 16 - Completeness of Registry

Dimensions			A	B	C	D	LGAF Findings
16	i	Mapping of registry records					Less than 50% of records for privately held land registered in the registry are readily identifiable in maps in the registry or cadastre.
16	ii	Economically relevant private encumbrances					Relevant private encumbrances are recorded consistently and in a reliable fashion and can be verified at low cost by any interested party.
16	iii	Economically relevant public restrictions or charges					Relevant public restrictions or charges are recorded consistently and in a reliable fashion and can be verified at a low cost by any interested party
16	iv	Searchability of the registry (or organization with information on land rights)					The records in the registry can be searched by both right holder name and parcel.
16	v	Accessibility of records in the registry (or organization with information on land rights)					Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee, if any.
16	vi	Timely response to a request for access to records in the registry (or organization with information on land rights)					Copies or extracts of documents recording rights in property can generally be obtained within 1 day of request

A large proportion of registered privately held rights (approximately less than 50%) are not readily identifiable on a map. While the Philippines has only one register of all land records, there are various agencies involved in surveying, mapping, recording, and

approval of cadastre; therefore, information relating to surveys and cadastral and municipal maps are spread across these organizations.

The LRA/RoD possess the title information, but they do not have cadastral maps. LMB/DENR on the other hand have the cadastral maps and records, but they do not have title information. The fact that both agencies do not have uniform projection maps constrain the sharing of information.

The lack of a complete map of registry records has resulted in weak planning for tenure security, among others.

This state of affairs has been identified as one of the many justifications for establishing a single land agency. Merging the registry and cadastre agencies would benefit the public and pave the way for a unified system of records management.

Economically relevant private encumbrances are consistently recorded and can be verified at low cost. Recording of private encumbrances are on voluntary or on-demand process, but are recorded consistently and in a reliable fashion as annotations at the back of the titles.

Where no fee is specified, registration or annotation of encumbrances will require payment of a registration fee, which follows a schedule.

Socially and economically relevant public restrictions are consistently recorded as annotation at the back of the titles. The public restrictions recorded/annotated in the titles include levy, tax liens, easements, right of way, public highways or roads, and limitations to disposition of properties arising from agrarian reform laws and regulations.

The registry is searchable by both right holder name and parcel. The Land Titling Computerization Project (LTCP) of the LRA has made possible any search by owners name or title easier, faster and more accessible with the launch of the A2A (Anywhere to Anywhere Service) and PVS (Parcel Verification Service). In a computerized Registry (on-line to the LTCP) the primary key for searching the registry is the title number. The cadastral lot number can also be used to search the registry.

Copies or extracts of documents recording rights in property can be obtained by anyone who pays the necessary formal fee. Titles and other documents in the different Registry are considered public document and by operation can be accessed by anyone. The searching of the records of the RODs is permitted by Property Registration Decree 1529.

The LTCP has made it more accessible to the public, such that anywhere there is an on-line RoD, anybody can search for pertinent title information.

There is timely response to request for access to records in the registry. Obtaining copies or extracts of documents from the different Registry of Deeds Offices is reasonably easy and fast. Even in registries still using a manual process, these can be secured within the day of request.

The LTCP has made this process even more accessible and faster for titles that are already in the system. However, for titles or documents that are not yet in the system, the time taken to actually obtain the requested copies can vary from 3 weeks to 3 months.

A more important concern, however, is the reliability of records kept at the registry. While access to information is fast and easy, the RoDs do not retire old records, which partly explains why searching by name would yield various records, even if these pertain to the same property.

#### 4.4.2 LGI 17 - Reliability of the registry

Dimensions			A	B	C	D	LGAF Findings
17	i	Focus on customer satisfaction in the registry					There are meaningful published service standards, but the registry does not actively monitor its performance against these standards.
17	ii	Registry/ cadastre information is up-to-date					
17	iiia	Registry					Between 50% and 70% of the ownership information in registry/cadastre is up-to-date.
17	iiib	Cadastre					Less than 50% of the ownership information in the registry/cadastre is up-to-date.

Offices of the RoDs have meaningful, publicly displayed standards, but these are not effectively monitored. Feedback from some clients indicated that the LTCP system tracks the progress of transactions and these are used to monitor staff performance. But it is not clear whether the individual performances are being consolidated to assess the performance of the office as a whole against the Citizen's Charter. Performances and issues are reportedly usually discussed during national meetings organized by LRA.

The panel reported that the difficulty in lodging a complaint against a government employee could be one of the reasons why there are not so many known actions taken on nonperformance.

Information on the registry/cadastre is not up to date. This situation arises from the high transfer costs which discourage many property owners from registering their transactions; the high proportion of untitled properties and thus transactions on these properties that remain outside the formal system; and incomplete cadastral surveys and outdated tax maps. Combined, these result in unreliable land records and a high cost of securing accurate records, as clients have to pay for their own research to verify the accuracy, particularly for large investors. These also contribute to delays in the formalization of housing, as it takes time to ensure the records are correct before transactions are brokered between the beneficiaries and third parties. Outdated land records likewise have the effect of reducing overall investor confidence in the registry.

#### 4.4.3 LGI 18 - Cost effectiveness and sustainability

Dimensions			A	B	C	D	LGAF Findings
18	i	Cost of registering a property transfer					The cost for registering a property transfer is equal to or greater than 5% of the property value
18	ii	Financial sustainability of the registry					The total fees collected by the registry exceed the total registry operating costs. <sup>8</sup>
18	iii	Capital investment					
18	iiia	Registry					There is significant investment in capital in the system to record rights in land so that the system is sustainable
18	iiib	Cadastre					There is investment in capital in the system to record rights in land but it is insufficient to ensure that the system is sustainable in the

<sup>8</sup> Total operating costs include all non-capital investment costs (i.e. salaries and wages, materials, transportation, etc.) associated with registry operation. Registry operating costs do not include long-term capital investment or associated depreciation expense.

Dimensions			A	B	C	D	LGAF Findings
							medium to long-term.

The cost of registering a property transfer is considered high, about 10% of the property value, against a global standard of less than one percent of the property value. Such high cost in transfer of properties has always been cited as the primary deterrent for registration of subsequent transaction. The capital gains tax is computed at 6% of the assessed or zonal values. Other costs include 1.5% documentary stamp tax and the IT fee imposed by RoD with the computerization of registries. The cost of transfers in the country have been computed at approximately 10% of market value, 62% of assessed value, and 30% of the value reflected in the Deeds of Sale.

This situation acts as a disincentive to the registration of land transactions. Coupled with the large numbers of untitled properties, the situation impacts the completeness of the registry, the ability of government to collect appropriate fees and taxes, and breeds dishonesty in registration of transfers. It is recommended that a study be undertaken to simulate the impacts of reducing the rate of transfer taxes and other related costs, with the aim of encouraging more property owners to formally register their transactions.

The registry is financially sustainable through fee collection. The LRA, through its RoD, is one of the government's top earning agencies. Its income exceeds its operating costs by more than half. Data gathered from the agency's website showed that for 2012, its appropriation is Php 925 Million, while its income for the first six months is already Php 2.3 Billion.

There is investment capital in the system, but it is insufficient to ensure medium to long term sustainability. The registry has been infusing resources to modernize and computerize its land records. For some years now, the Build-Operate-Own (BOO) scheme under the LTCP has been under development. However, whether this investment will be publicly beneficial and equitable in the long term remains a concern, due to the limitations this will impose on the affordability of access to land records. Such investments are expected to pay off due to the level of earnings the agency derives from its transactions and provision of other services.

The cadastre, on the other hand, has recently been planning to invest in computerization through the roll-out of the LAMS, under the auspices of the Additional Financing of LAMP2. The LAMS will also facilitate access to land records by agencies, in particular the LGUs, for use in land use planning, development, and property assessment and taxation.

The DENR has also allocated some P 3 Billion to complete the cadastral surveys in the Philippines by 2016. This investment should contribute to the completion of the records and should facilitate the titling of the remaining untitled parcels. These initiatives will boost the capability of the LMB/LMS to provide the needed services to LGUs and other clients through better records.

Given the above, the registry is still seen as having better prospects of being more financially sustainable through incomes from subsequent transactions. On the other hand, the investment in the DENR/LMB to improve cadastral records represents a one-time capitalization.

#### 4.4.4 LGI 19 - Transparency

Dimensions			A	B	C	D	LGAF Findings
19	i	Schedule of fees is available publicly					A clear schedule of fees for different services is publicly accessible and receipts are issued for all transactions
19	ii	Informal payments					Mechanisms to detect and

Dimensions			A	B	C	D	LGAF Findings
		discouraged					deal with illegal staff behavior exist in all registry offices but cases are not systematically or promptly dealt with

The schedule of fees for different services is publicly accessible. The fees for the transactions in the registries are accessible to the public, as this are published in the Citizen's Charter posted in the offices of the LRA and the different RDs nationwide. In addition, these are also posted in the agency website.

In contrast, DENR is not as consistent in displaying its Citizen's Charter and schedule of fees. While the fees are published in the agency website, the lay-out of its offices does not make the fees as readily accessible as the fee schedule on the LRA website.

Mechanisms to detect and deal with illegal staff behavior exist in all registry offices, but cases are not systematically or promptly dealt with. The panels observed that it is difficult to lodge a complaint, although LTCP has drastically reduced discretion by employees with respect to the amount of fees that need to be paid.

## 4.5 Dispute Resolution and Conflict Management

### 4.5.1 LGI 20 - Accessibility of conflict resolution mechanisms

Dimensions			A	B	C	D	LGAF Findings
20	i	Accessibility of conflict resolution mechanisms					Institutions for providing a first instance of conflict resolution are accessible at the local level in the majority of communities
20	ii	Informal or community based dispute resolution					There is an informal or community-based system that resolves disputes in an equitable manner and decisions made by this system have some recognition in the formal judicial or administrative dispute resolution system
20	iii	Forum shopping					There are parallel avenues for dispute resolution but cases cannot be pursued in parallel through different channels and evidence and rulings may be shared between institutions so as to minimize the scope for forum shopping
20	iv	Possibility of appeals					A process exists to appeal rulings on land cases but costs are high and the process takes a long time

State sanctioned conflict resolution mechanisms are available at the community level. In cases of conflict, the country has in place a Barangay Justice System (BJS) which serves as the mechanism for first level community resolution of disputes before these are brought to the formal courts. To strengthen the BJS, the courts do not accept cases lodged before them without a certification that these were not resolved at the barangay level.

There is minimum scope for forum shopping. The Rules of Courts provides for a clear assignment of responsibilities for resolving conflicts. Rule 7, Section 5 requires a certification from the BJS/LP before it accepts cases filed before higher courts. Still, there are several reported instances in which certain litigants have resorted to forum shopping.

The processes for appealing land dispute rulings are costly and take a long time to resolve. The study revealed that more than 90% of cases decided by the Supreme Court



in 2012 took over 20 years to be resolved with finality. Even cases first filed with the lower courts as far back as 1970 were only decided by the Supreme Court in 2012. In fact, it is commonly acknowledged that land related cases take a very long time to be resolved, in many cases spanning decades, and in some, outliving the parties involved.

#### 4.5.2 LGI 21 - Efficiency of conflict resolution

Low Level of Pending Conflicts			A	B	C	D	LGAF Findings
21	i	Conflict resolution in the formal legal system					Land disputes in the formal court system are between 10% and 30% of the total court cases.
21	ii	Speed of conflict resolution in the formal system					A decision in a land-related conflict is reached in the first instance court within 1 year for less than 50% of cases
21	iii	Long-standing conflicts (unresolved cases older than 5 year)					The share of long-standing land conflicts is greater than 20% of the total pending land dispute court cases.

Land related cases constitute a small percentage of cases filed in Courts; however cases take many years to be resolved. In the Philippines, land related cases are classified as civil cases. Data taken from Tacloban City Regional Trial Courts (RTC) in the course of the LGAF study showed that land related disputes constitute 43% of the total number of civil cases, or about 7% of the active cases in Court. These ranges are supported by estimates from other Courts in Quezon City, Legaspi, San Carlos City, Bayawan city, and Laoag City, which place at less than 10% the proportion of land related cases in Courts. Nonetheless, it is common that criminal offenses are also made in the course of land related conflicts, so there could be a case of underreporting if viewed from the proportion of active civil cases in Court.

A more important concern is the length of time for land related cases to be resolved, such that it is almost impossible for such cases to be settled within one year in the first instance court anywhere in the Philippines. In the Tacloban case, the Executive Judge reported that it is common for land cases to take more than 5 years in the courts to get resolved. Other RTCs likewise reported that it is very common to have land cases still unresolved in the lower courts that are more than 10 years old.

A review and analysis of all cases decided by the Supreme Court in 2012 revealed that of the total 961 cases decided with finality, 163 involved land dispute cases. Of these, 159 or 97% took more than 5 years for the lower courts to issue decisions.

The lengthy process for the Courts to reach a decision on land related cases have a bearing on the cost to the parties and vice versa. The filing fee, for instance, depends on the size of the land in question and is assessed based on certain percentage of its value, thus making it prohibitive for low income families. Once lodged in Court, the protracted process necessitates payments to lawyers and expenses in documentation and Court hearings.

#### 4.6 Large Scale Land Acquisition

A number of prerequisites to good governance in large-scale investments in rural lands and portions of the public domain are in place. However, there remain inadequacies in implementation, monitoring, and the provision of information required by both investors and host communities. Altogether, these have resulted in creating a negative perception on the intentions behind large scale investments, thereby undermining its effectiveness as a strategy for stimulating inclusive growth in the rural sector.

#### 4.6.1 LSLA 1-2 Land rights recognition and conflicts

LSLA	Topic	A	B	C	D	LGAF Findings
1	Most forest land is mapped and rights are registered					40-70% of the area under forest land has boundaries demarcated and surveyed and associated claims registered.
2	Conflicts generated by land acquisition and how these are addressed					Conflicts related to use or ownership rights and directly or indirectly related to land acquisition are relatively frequent (more than 5% of rural land area affected) and the inability to address these conflicts expeditiously and in a transparent manner results in long pending disputes.

The mapping of forest land boundaries has been completed except in the Autonomous Region of Muslim Mindanao (ARMM). However, the mapping and registration of all individual and communal rights within forest lands are still huge tasks that require resources and attention.

Conflicts related to use or ownership rights and directly or indirectly related to land acquisition are relatively frequent, and the inability to address these conflicts expeditiously and in a transparent manner results in long-pending disputes. In the Philippines, large scale land acquisition takes the form of investor agreements with farmers/CLOA holders, forest tenure holders, and indigenous peoples communities to make available large tracts of land to support plantations, and other agri-forest enterprises. Modest ratings for the indicators and dimensions in these areas are linked with over regulation, overlapping policies and jurisdictions, weak monitoring for compliance, lack of investor incentives, and vulnerability of community organizations.

Conflicts usually arise due to unfulfilled promises, low rentals, noncompliance with FPIC procedures, and/or non-recognition of IP rights. In public lands, conflicts arise when land development is not consistent with approved resource management plans.

#### 4.6.2 LSLA 3-4 Land use planning and practices

LSLA	Topic	A	B	C	D	LGAF Findings
3	Land use restrictions on rural land parcels can generally be identified.					The land use restrictions applying to any given plot of rural land can be unambiguously determined on site for land occupied by 40 – 70 % of the population
4	Public institutions in land acquisition operate in a clear and consistent manner.					Institutions that promote, channel or acquire land for purposes of interest to this study have clear standards of ethical performance but implementation is variable and accounts are not subject to regular audits

Land use restrictions on rural land can generally be identified on the ground for CARP areas, but this is not so for forest lands, ancestral domains, and national parks.

Public institutions involved in land acquisitions are regularly audited and their reports made public, but these are based on general audit and civil service rules. In the field, some staff can be involved in deals, and LGU performance varies widely.

### 4.6.3 LSLA 5 - 11 Investments

LSLA	Topic	A	B	C	D	LGAF Findings
5	Incentives for investors are clear, transparent and consistent.					There are written but unclear provisions in law or regulations regarding incentives for investors and their applicability have to be negotiated on a case by case basis in a way that is often discretionary
6	Benefit sharing mechanisms for investments in agriculture					Mechanisms to allow the public to obtain benefits from the investment (or investing party) other than compensation (e.g., schools, roads, etc.) are rarely used or applied in a discretionary manner
7	There are direct and transparent negotiations between right holders and investors.					Final decisions are made in direct negotiations but a non-transparent and often discretionary process for obtaining approval is required
8	Information required from investors to assess projects on public/community land. <sup>9</sup>					<b>A</b> – Investors are consistently required to provide exhaustive information on company background and financial/technical analyses that is sufficient to assess viability and benefits from the project. <b>D</b> – Information required from investors is not consistently and generally insufficient to assess viability and benefits from the project.
9	Information provided for cases of land acquisition on public/community land.					Investors provide some information required from them and - subject to reasonable limits on confidentiality - this information is publicly available
10	Contractual provisions on benefits and risks sharing regarding acquisition of land					Contracts must specify arrangement regarding sharing of benefits or risks but are poorly understood or agreed to by all parties
11	Duration of procedure to obtain approval for a project					In most cases, investment application related documents are reviewed and receive a response within 6 months of date of submission

There are written but unclear provisions in law and regulations regarding incentives for investors, and their applicability has to be negotiated on a case by case basis in a way that is often discretionary. There are inconsistencies in policies on forest plantations, which discourages further investments. Tenure instruments cannot be used as collateral, thus community forest managers do not have access to capital for land development.

Mechanisms to allow the public to obtain benefits from the investment (or investing party) other than compensation (e.g., schools, roads, etc.) are rarely used; where they are, they are typically applied in a discretionary manner. There are no standards. Instead, terms are negotiated on a case by case basis. Likewise, there is a lack of guidelines for benefit sharing.

Policies and guidelines encourage direct negotiations between rights holders and investors, but these are not always transparent. There have been reports of improper procedures in securing free, prior, and informed consent (FPIC). Similarly, a lack of full disclosure on the proposed investments and misrepresentation have been documented.

<sup>9</sup> D for LGUs; A for Philippine Agribusiness Development Corporation (PADDC)

The type of information required from investors is not consistent across national agencies and LGUs, thus creating confusion and opportunities for discretion. Investors are also required to provide information, but not all information is publicly accessible.

Contracts specify risk and benefit sharing, but these are poorly understood and agreed by all parties. There are no clear standards for benefit and risk sharing with communities in large scale land acquisition projects. In many cases, benefit sharing is an outcome of direct negotiation between investors and right holders. In cases like these, government agencies provide an oversight role to ensure just and fair treatment.

Generally, investment applications receive a response within six months. However, this could take longer with the Department of Agrarian Reform (DAR) if it involves land tenure improvement issues. Other factors, such as community apprehensions, lack of understanding by host communities, and limited transparency, further delay the process.

#### 4.6.4 LSLA 12-13 Environmental and social safeguards

LSLA	Topic	A	B	C	D	LGAF Findings
12	Social requirements for large scale investments in agriculture					Social safeguard requirements for investors are clearly documented and defined (i.e., with details regarding specific processes and elements in the assessment) but implemented with discretion
13	Environmental requirements for large scale investments in agriculture					Environmental safeguard requirements for investors are clearly documented and defined (i.e., with details regarding specific processes and elements in the assessment) and consistently implemented but do not include provisions for assessment and mitigation of direct and indirect effects.

Environmental and social safeguards are in place, but there is weak monitoring of compliance. The policy and practice of investor financing the cost of monitoring should be revisited to allow for more independent monitoring of compliance with conditions for environmental compliance certificates.

#### 4.6.5 LSLA 14-16 Institutional capacity and coordination

LSLA	Topic	A	B	C	D	LGAF Findings
14	Procedures for economically, environmentally, and socially beneficial investments. <sup>10</sup>					
15	Compliance with safeguards related to investment in agriculture					Responsible government agencies follow up on the agreements to check for compliance and but do not take reasonable actions in cases of non-compliance
16	Procedures to complain if agricultural investors do not comply with requirements.					There is a clear process by which affected parties or the public at large can lodge complaints regarding investor compliance with safeguards. Mechanisms to deal with these fairly and expeditiously are in place but not consistently implemented

There are avenues to lodge complaints by affected parties with responsible agencies depending on the nature of the complaint, such as Department of Labor and Employment (DOLE), DENR, and DAR. This could be further improved with a common or dedicated lodgment of complaints on matters involving LSLA.

#### 4.7 Forestry

The country's public lands constitute about half of the country's total land area. Large portions of these are classified forest lands, key biodiversity areas, protected areas, and ancestral domains. Regardless of official land classification, these are essentially forested areas, managed to provide ecosystem services, forest production and livelihood, and forest-based industries. The assessment confirmed that while most of the policies are already in place, much could be improved with effective implementation and consistent application, resourcing, and re-allocation of resources.

##### 4.7.1 FGI 1 - Commitment to sustainability and climate change mitigation

FGI-Dim	Topic	A	B	C	D	LGAF Findings
1	i					The country has committed to follow most or all of these treaties, and its implementation is fairly good. It is following most of them
1	ii					A few incentive mechanisms are available, including for PES and REDD+. Funding is often not available and the programs are not considered cost effective.

The country is signatory to most important international conventions, but there are limited resources to implement them. It is also actively engaged in global discussions on issues of importance to Philippine interests and is implementing its commitment with these conventions within its capacity. These include the Convention on Biodiversity (CBD), the UN Framework on Convention on Climate Change (UNFCCC), the Convention on International Trade of Endangered Species (CITES), and the Ramsar Convention.

Incentives such as PES and REDD+ are still in their infant stage in the Philippines. The national policies governing these are not yet fully developed, and implementation has

<sup>10</sup> Not applicable. Public and community lands cannot be transferred.

mainly been through pilots only. Thus their potential to contribute to sustainable forest management and effective management of protected areas has not yet been realized.

#### 4.7.2 FGI 2 - Recognition of Public Goods Aspects and Promotion of Sustainable Use

FGI-Dim		Topic	A	B	C	D	LGAF Findings
2	i	Public good aspects of forests recognized by law and protected					The law recognizes and strongly promotes the sustainability of and offers protection for a wide variety of public goods and services
2	ii	Forest management plans and budgets address the main drivers of deforestation and degradation					Addressing the drivers of deforestation and degradation appears to be given the same level of priority as other activities in forest development plans and budgets

There are strong policies in place that recognize and protect the public goods aspects of forests. However, the effectiveness of these policies is constrained by limited funding and resources for protected area management and/or protecting existing forests.

Current plans and budgets are still not fully aligned with addressing the key drivers of deforestation and degradation. This framework can be used to review the composition, scope, and location of investments in forestry and protected areas. Historically, forest management plans and public funds have focused on increasing forest cover and rehabilitating degraded forests. Equal attention should be given to providing incentives for forest communities and tenure holders to encourage sustainable behavior.

#### 4.7.3 FGI 3 - Supporting Private Sector Sustainable Investment

FGI-Dim		Topic	A	B	C	D	LGAF Findings
3	i	Country's commitment to forest certification and chain-of-custody systems to promote sustainable harvesting of timber and non-timber forest products					The government does not require certification but supports and encourages it and chain-of-custody systems; the area under certification in the country is growing but only slowly.
3	ii	Country's commitment to SMEs as a way to promote competition, income generation and productive rural employment					There is support, but the government could do much better

The Philippines is still lagging behind in terms of forest certification and chain-of-custody systems, thereby affecting the competitiveness of its industry. The absence of these systems also weakens the ability to monitor the extent to which forest resource managers apply sustainable management systems in their areas. Pilots started in the early 2000s, but was not pursued. There are renewed efforts recently, to revive the forest certification system through draft guidelines that are being reviewed at the DENR.

There is very little support to the development of small and medium enterprises in the forestry sector, which constrains its potential to generate income, promote rural employment and competition and stimulate economic activity in the rural areas. With about one third (30 million) of the population living in the uplands, a more positive environment for incentives driven forest management systems is expected to stimulate rural economic growth, provided sufficient safeguards are in place.

#### 4.7.4 FGI 4 - Livelihood of Forest-Dependent Communities

FGI-Dim		Topic	A	B	C	D	LGAF Findings
4	i	Recognition of traditional and indigenous rights to forest resources by law					The law mostly recognizes traditional and indigenous rights and guarantees security of access to forest dependent communities.
4	ii	Sharing of benefits or income from public forests with local communities by law and implemented					The law addresses benefit sharing but the rules are unclear and unenforceable

In the Philippines, the IPRA recognizes traditional and indigenous rights to forest resources, but DENR still subject these to permits and regulations. There have been moves to register the traditional practices of indigenous peoples, so that these are not regulated by government, instead subject to the internal governance systems of these communities.

While there are enabling policies for benefit sharing from public forests and protected areas with communities, the absence of clear and specific guidelines has prohibited many communities from fully enjoying the benefits and getting their fair share from the natural wealth. Thus, implementation has been discretionary, without standards and transparent safeguards.

#### 4.7.5 FGI 5 - Forest Land Use, Tenure, Conversion

FGI-Dim		Topic	A	B	C	D	LGAF Findings
5	i	Boundaries of the countries forest estate and the classification into various uses and ownership are clearly defined and demarcated					Forest boundaries are clearly surveyed and demarcated only in some places and ownership is unclear and widely contested.
5	ii	In rural areas, forest land use plans and changes in these plans are based on public input.					Public input is sought in preparing and amending land use plans and the public responses are used by the public body responsible for finalizing the new public plans, but the process for doing this is unclear or the report is not publicly accessible.

The mapping and demarcation of forest boundaries is almost complete. However, most of the tenure classifications and various uses of the public land (forest lands, protected areas, and public A and D) are not clearly defined and demarcated; thus ownership is widely contested..

The delineation and demarcation of protected areas, while proceeding under a program, lacks the necessary budget and resources to be completed in the immediate term. All this information should be reflected in an integrated map showing all the interests in public lands, and such a map should be made accessible to the public.

The forest land use planning (FLUP) process allows public participation in planning and land use allocation; however, it is not yet widely implemented. The recent moves to integrate the FLUP processes into CLUPs and to enhance the FLUP to be more inclusive of the entire public domain (including protected areas, ancestral domains and other

reservations), as well as integrated biodiversity, disaster risk, and vulnerability concerns, are steps in the right direction.

#### 4.7.6 FGI 6 - Controlling Illegal Logging and Forest Crimes

FGI-Dim		Topic	A	B	C	D	LGAF Findings
6	i	Country's approach to controlling forest crimes, including illegal logging and corruption					The government partially monitors the extent and types of forest crimes and makes partial and unsystematic efforts to control it.
6	ii	Inter and intra agency efforts and multi-stakeholder collaboration to combat forest crimes, and awareness of judges and prosecutors					Officials inside and outside the forest agency occasionally work together to combat forest crime; government sometimes collaborates with civil society organizations and representatives of local communities, and; many judges and prosecutors are knowledgeable about the effects of forest offences.

There have been some gains in the campaign and enforcement of regulations against illegal logging, hunting, and trade of prohibited wildlife. Efforts at illegal logging could be improved if assessed against domestic supply and demand of wood in the country. This would provide a better indication of the effectiveness of efforts against illegal logging.

Considered good practice is the strong inter- and intra-agency efforts and multi-agency efforts to combat forest crimes in the Philippines, but these are patchy and not sustainable. Many of the multi sectoral forest protection committees established in the late 1990s and early 2000s have ceased to function due to limited funding, waning interest from some parties, and strong influence wielded by political figures.

## 5.0 POLICY AND PROGRAM PRIORITIES

The above key findings and recommendations have pinpointed clear areas for reforms to address weak governance in the lands sector.

The reforms include legislations to address institutional overlaps, establish a national framework for national land use allocation, improve property valuation and taxation, and establish a comprehensive resettlements policy. Other measures to accelerate titling coverage, expand support to LGU led LAM reforms, improve the procedures and records system of the Courts, can have far reaching impacts on the clients of the LAM system. Review of large scale land acquisition policies and incentives for forest management can likewise revitalize the rural sector, by bringing these lands under more sustainable management, and achieve equity in access to land as a means of production.

These proposals are described below.

### *Support the passage of the Land Administration Reform Act*

The establishment of a single land agency is key to improving land governance. This should address the structural defects of the system through the reduction of horizontal overlaps in the mandates of key agencies that impact the following:

- Efficiency in service delivery;



- Access to complete and reliable, up to date records;
- Improved confidence in the land related agencies; and
- Reduced opportunities for syndicates, informal payments, and other inappropriate practices.

In support of these, the government should develop a National Spatial Data Infrastructure (NSDI) that will facilitate exchange and sharing of land related information among agencies and make these more accessible to the public.

*Support the passage of the National Land Use Act*

The Bill should be able to provide a broader policy framework governing land use allocations, limits to conversion, and expansion of selected uses. These should ensure there is balance overall to meet future demands for food security, housing and shelter, industry and commerce. From the perspective of public land management, the Bill should provide adequate allocations for the protection of forests and national parks to deliver public goods.

*Support the passage of the Property Valuation Reform Act (VRA)*

The proposed Bill should address the systemic issues associated with LGU failure to adopt market based valuation and conduct regular updating of SMVs. This should also impact on poor collection efficiency and unclear policies regarding LGU authority to grant exemptions.

The current situation is that low collections from property taxes perpetuates LGU dependence on the IRA, while non-adherence to market values affects the determination of just compensation for properties expropriated by LGUs.

The VRA should be coupled with proposals to amend the Local Government Code to address the disincentives offered by the IRA.

*Remove/minimize disincentives for registration of land transactions*

High transfer taxes (particularly the capital gains tax which is computed at 6% of the property value), perceived bureaucratic processes, and low confidence in the registry all contribute to unreliable and out-of-date records in the registry.

Coupled with the large number of untitled parcels (estimated at 40% of all parcels, or about 11 million), these affect the completeness of the registry, the cost of securing accurate records, and the collection of appropriate fees and taxes by government. These also contribute to delays in formalization of housing for informal settlers in the urban areas.

*Undertake an accelerated titling program*

The high proportion of untitled properties constrain the effective functioning of the land market and affects investments in property development. It also exposes the property owners, particularly the poor, to undue risks. Titling also has the added benefit of improving the property tax roll of the LGUs, thereby contributing to increased property tax collections.

In rolling out titling, the design can also consider streamlined procedures for titling tested under LAMP1 and LAMP2, which could be rolled out in partnership with LGUs, who will stand to benefit most through improved ability to collect property taxes.

*Upscale LGU led initiatives in improving land governance*

The LAMP Innovation Support Fund and the REGALA model have proven that land governance can be addressed at the local level through LGU initiated projects. Interventions include: (i) LGU led systematic titling, which produce updated tax maps

on newly titled parcels and increased real property tax payments; (ii) use of parcel based information and mapping through geographic information systems to produce integrated databases on tax delinquency, tenure, land use and other data; (iii) application of market based valuation in the updating of schedule of market values; and (iv) utilization of updated parcel data for integration of disaster risk management, land use and comprehensive city development planning. These are issues of priority importance to the LGUs and provide sufficient incentives because they produce clear results: (i) improved service delivery; (ii) enhanced LAM interagency cooperation at the national level (where it is difficult to achieve nationally); (iii) increased internally generated revenues (taxation); and (iv) improved governance capacities.

Support for scaling up similar programs beyond the nine LGUs participating could generate a snowball effect on land governance in the country, even if the major reforms identified above are not fully in place.

*Develop a comprehensive approach to improving the environment for large scale land acquisition in the country*

There is a need for more comprehensive approach to the issues of large-scale land based investments, through a review of current policies and incentives and their implementation.

The response should include greater incentives and more stability of policies on investments in forest lands, more transparent procedures in investments in ancestral domain areas, the development of safeguards, the monitoring of large scale acquisitions, and support to communities.

The review should enable the development of more responsive policies and support to enable large scale land acquisition to contribute to food security and stimulate rural employment and economy. These actions should be done without endangering the environment or compromising rights, and ensure there is respect for culture and traditions. These investments are also badly needed in these areas, so a more suitable code of ethics and acceptable standards would have to be in place.

*Provide better incentives to local forest managers to improve sustainable forest management*

At the center of these recommendations include greater consistency in policies for resource use, more rational regulation of CBFMAs and wood industry, the promotion of certification and value chains, and the development of benefit sharing mechanisms.

These strategies should be complemented with identifying protection and conservation areas, mapping of all interests in the forest lands and national parks, as well as improving the financial terms of such concessions. On the enforcement side, adequate actions should be taken to effectively control illegal logging and illegal harvesting of forest products, to enable the certification system and other incentives to prove beneficial.

Tools to support these would include the preparation of inclusive FLUPs, greater access to information, and the adoption of an integrated ecosystems management framework that rationalizes all tenure, activities, rights, and plans in watersheds to seek consensus on and achieve agreed objectives.

*Develop a National Resettlements Policy*

This is a clear policy gap that can be given attention in the medium term, as the government increases its investments in infrastructure development to stimulate growth.

This proposal should address the fairness and promptness of compensation, and should apply to all government projects regardless of funding. The policy should also ensure consistency in implementation across all agencies and LGUs involved in expropriation and/or resettlement in implementation of projects.

#### *Initiate reforms in the Court system*

The reforms should address the key issues associated with the lengthy and expensive processes for appeal of land dispute rulings. Key recommendations include the establishment of a data base system of case, the creation of dedicated land courts, and the setting up of Land Adjudication Boards for more speedy resolution of land cases. An associated suggestion is to improve the capacities of BJS to resolve land related conflicts.

### **SUGGESTIONS ON WAY FORWARD**

The following actions are suggested to advance consideration of the recommendations presented in this study:

Establishment of a multi-sectoral land governance body: Firm up the formulation of a Land Governance Agenda through the establishment of a multi-sectoral body to review the recommendations vis-a-vis the LSDF. Such group could form the backbone of what may be called a Land Governance Coalition, sharing a common vision of advocating and monitoring actions to address the main findings from the LGAF. It is recommended that in view of the cross cutting concerns of LGAF, an oversight agency senior official be named as the Chair, in alternate with a civil society or a land agency representative.

On the basis of the above, the body or coalition should seek consensus to prioritize the actions for implementation and allocate responsibilities among the key member organizations and personalities. These actions could be categorized as those requiring inclusion in the legislative agenda, those requiring investments to scale up implementation, and those requiring administrative actions or improvement in procedures and systems to provide incentives for compliance.

Present the Land Governance Agenda to the Cabinet/President for adoption. These could be used to update the current PDP and/or used as basis for engagement with development partners through the PDF mechanism.

Tracking progress: Monitor implementation through institutionalization of LGAF to track progress in land governance. A repeat of the LGAF could be made in 2016 to establish the achievements undertaken, and the results could be used to feed into the next PDP of the incoming president.

Sub-national assessments: To take advantage of the expertise and experience already gained in the LGAF country study, it is recommended that a more focused LGAF be undertaken on the following to further investigate the unique issues present in these situations:

- A Mindanao LGAF to determine priorities in a regional setting which is currently the focus of development interventions, and yet is abundant in land and natural resources. The rich cultural history of the region would also offer a good backdrop to surface the distinct issues and determine how these impact on land governance.
- A more detailed investigation of the large scale land acquisition module is recommended to address the main limitations posed in this study. This could be done in parallel with the Mindanao LGAF. It is envisaged that as CARP is completed in 2016, there would be greater challenges in stimulating rural agricultural growth. These include among others, providing a suitable

environment for LSLA to operate in a way that benefits the rural economy, small farmers, and also contribute to meeting food security.

- A Metro Manila LGAF to explore land governance issues in a highly urban setting. It is expected this will offer a different perspective to both the national and Mindanao LGAF, and will help provide a model for other cities.

## 6.0 CONCLUSIONS

The government has already laid out a Lands Sector Development Framework (LSDF) – a 20 to 30 year program that is meant to address the inadequacies in the lands sector. The LGAF reinforces the LSDF by way of establishing clear benchmarks of governance following internationally accepted indicators that will be useful for monitoring progress over time. Further, the LGAF has clearly identified areas for priority actions that should be given attention in the medium and long term, thus providing a strong basis for more strategic response.

The assessment revealed that the country achieved good governance ratings in enabling laws, policies, and procedures. Furthermore, the strong democratic space allows participation and public inputs in the development and monitoring of policies and programs. The government commitment to good governance promotes adherence to transparency and the public provision of information, thereby enabling the Philippines to achieve best practice standards in the relevant dimensions. Finally, the adoption of information technology and modernization has contributed to good governance – e.g., LTCP – resulting in more transparent, efficient provision of land administration services.

The application of the LGAF has demonstrated too that it could be a powerful instrument for prioritizing actions and establishing benchmarks for governance in land. Modest governance ratings were given in implementation of policies owing to resource constraints, weak procedures, lack of monitoring, or simply lack of compliance (weak incentives, ignoring policies). Thus, for dimensions rated as second best practice, the study has surfaced areas where best practice standards can be achieved by way of addressing procedural and implementation weaknesses of existing policies; or increasing the level of resource allocation to implement key policies – for example; the Indigenous Peoples Rights Act. Others would require capacity building and/or institutional development, in the case of the regular updating of SMVs using market rates. In others, more focused studies would be required to better inform policies, and develop cost effective options.

Addressing dimensions where the country is rated as “struggling to meet good governance criteria” would require more comprehensive measures, improved/new policies, to address systemic issues. For most of these dimensions, it is clear that addressing the underlying causes of poor governance would require new policies or the revision of existing policies, and/or investments over the medium to long term to address huge gaps in coverage.

The above assessment has likewise shown that the beyond improving governance in the identified areas, the proposed actions will have far ranging impacts on inclusive growth, equity, tenure security of the poor, and economic growth in both urban and rural areas. On the part of the government, reform measures would have the effect on the ability to increase revenues that are crucial for fuelling public investments for socio-economic development.