



SB 2553: Bane or Boon?

Last September 15, 2003, a full-page advertisement came out in the Philippine Daily Inquirer with a catchy heading statement in bold saying "Scrap SB 2553!" – referring to Senate Bill 2553, otherwise known as the Senate version of the *Farmland as Collateral Bill*.

Basically, the ad slammed the mentioned Bill, saying it contains "onerous" provisions that would "deal a fatal blow to the Comprehensive Agrarian Reform Program (CARP)." Because of these provisions, says the ad, the effects of SB 2553 will be the following:

1. Farmers will lose their land, which will be reconsolidated in the hands of the wealthy few because (a) the foreclosure of properties involved in past illegal and usurious loans will be legitimized; (b) lands that have been foreclosed will no longer be required to be subject to CARP; and (c) limits on ownership of such lands will be removed.
2. The Bill will not help ease small farmers' access to credit because bankers have already expressed unwillingness to lend to small farmers even with their farmlands offered as collateral.
3. The constitutionally mandated social justice concept of equitable land distribution will be negated and billions of pesos of government investment in agrarian reform will be wasted.

The ad further claims that the Bill was hastily passed by the Senate on third reading (last September 3, 2003) even as various stakeholders were democratically registering their overwhelming opposition to it.

With such intriguing circumstances surrounding SB 2553, it seems necessary, at the very least, to examine the Bill and its background.

What Is the "Farmland as Collateral Bill" All About?

The Farmland as Collateral Bill finds its basis in the policy pronouncement of President Gloria Macapagal-Arroyo for the enactment of "a law making farmlands acceptable as loan collateral in order to reduce deterrents to investments in agriculture." She first enunciated this during her 2001 State-of-the-Nation Address (SONA) and consequently echoed her appeal to Congress in her succeeding SONAs.

The policy statement is by no means lacking in basis. Economic analysts have long suggested that one of the factors limiting the availability of credit for more agricultural investments (by making credit costs or risks higher) is the eroded collateral value of agricultural land (Ravalo, 1998; David, 2002). The basic prerequisites for the acceptability of collateral are (a) *Seniority* – or the existence of a legal, enforceable priority claim over the collateral; (b) *Protection* – or the capacity of the collateral to sufficiently repay the lender's exposure; and (c) *Marketability* – or the easy convertibility of the collateral into cash (Dingcong and Llanto, 1990; Marasigan, 1994). On all three prerequisites, however, farmlands – particularly lands covered by the CARP – generally fail to measure up.

A creditor cannot exercise *seniority* over Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) issued under the CARP primarily because RA 6657 or the Comprehensive Agrarian Reform Law (CARL) prohibits their sale or transfer over a period of ten years. Moreover, a creditor is bound by the 5-hectare retention limit pegged by the CARL. That is, it can only foreclose agricultural lands up to a maximum of 5 hectares. In excess of that, the lands have to be disposed to the government.

As a collateral instrument, lands devoted to agricultural production also do not offer much *protection*. Because of the 5-hectare retention limit of the CARL, revenue-generating power and the capacity to pay for the loan is severely constrained. The *marketability* or convertibility to cash of farmlands is, likewise, adversely affected by the government's priority claim over them – since government is the only authorized buyer of these lands, it has exclusive prerogative over how much it will pay for them. Moreover, payment depends on when funding will be available.

It was in response to the President's appeal that Congress worked at the crafting of the Farmland as Collateral Bill. SB 2553 is already the Substitute Bill to earlier similarly-aimed legislative bills, which include the Lower House's own approved version – House Bill 5511. The highlight of HB 5511 is the provision for the setting up of a state-provided P5 Billion guarantee fund which will be used to guarantee the mortgage (with the Quedan & Rural Credit Guarantee Corporation acting as guarantor). According to U.P. School of Economics Dean, Dr. Raul Fabella, however, this proposition entails the following problems: (a) the government which is already perennially in a financial bind, will again be required to fork out more; (b) being government-dependent, the default procedure will still not help restore the rural land and credit markets, which ensure long-term sustainability; (c) by voluntarily assuming responsibility over defaults, government will not help promote prudent lending practice; (d) on the other hand, if government fails to prove true to its obligation in promptly answering guarantee claims – as often happens – it will sap lender commitment (Business World, June 24, 2003).

Correcting the Land and Credit Markets

Disregarding the guarantee provision contained in HB 5511, SB 2553 instead focuses on how to restore the legal rural land market and, thereby, the formal rural credit market. This is achieved by the Bill mainly through section 27-A, which states the following:

"The land awarded to the farmer-beneficiary may be mortgaged to any person, natural or juridical. In the event of default by the farmer-beneficiary, the mortgagee may foreclose on the land subject to existing law, provided, that the farmer-beneficiary shall have the right to redeem the land within two (2) years. Lands which have already been subjected to redistribution under the comprehensive agrarian reform program including lands retained by the original landowner subject to retention limits (provided in the law), may be sold, transferred or conveyed to any person and such person shall not be subject to any limitation on the total area of lands he may own."

The significance of this section is that it allows the mortgage or sale of awarded lands, formerly prohibited under CARL. Dr. Fabella mentioned that this should result in:

- A. Land prices being revealed – hence, improvement in *marketability*;
- B. Correct pricing of EPs and CLOAs – hence, improvement in *protection*; and
- C. Banks being allowed to foreclose and own more land than the CARP limit – hence, improvement in *seniority*.

So, Is It Good or Bad?

The answer, of course, is "it depends." One will have to make his/her own value judgment about SB 2553 based on his/her appreciation of subsequent events still to be influenced by the passage of the Bill.

However, what is clear is that the agrarian reform program continues to suffer from a huge funding gap which is expected to result in continued delays in the completion of the land redistribution schedule. According to the Land Bank of the Philippines, it needs around P62 Billion for land acquisition and distribution over the next five years (Daily Tribune, August 11, 2003).

On the other hand, former Department of Agrarian Reform (DAR) Undersecretary Conrado Navarro disclosed that the DAR as of 2001 needed around P80 Billion to support its targeted Agrarian Reform Communities (ARCs) up to 2004 (Philippine Daily Inquirer, August 12, 2001).

Clearly, this indicates that the completion of the CARP is still nowhere in sight. Unfortunately, according to Dr. Cristina David of the Philippine Institute for Development Studies (PIDS) in one of the papers she authored in 2002 (Philippine Agriculture: A Victim of Weak Governance), a study on "Redistribution, Investment and Human Capital Accumulation: The Case of Agrarian Reform in the Philippines" prepared in year 2000 by Messrs. Klaus Deininger, Francisco Lara, Jr., Pedro Olinto and Miet Maertens of the World Bank, reports that the malfunctioning of land markets arising from continued restrictions in land ownership result in economic costs that are likely to be greater than the direct benefits of land reform.

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