The lack of secure property rights is one of the major factors that hampers Philippine peace and economic development. The Property Rights for Economic Progress project, a joint initiative between The Asia Foundation and USAID, focuses on the implementation of the Residential Free Patent Law. The pilot site is in Cebu City.

Source: "IMG_1034 LEYTE MAP" (http://www.flickr.com/photos/bowakon/326505264/) by Bulacac Paruparu (link to photostream of user), from Flickr.com/CreativeCommons. Some rights reserved under the following licenses: http://creativecommons.org/licenses/by/2.0/ http://creativecommons.org/licenses/by/2.0/deed.en
In 1960, Ronald Coase published his seminal paper, *Theory of Social Cost*, which became one of the cornerstones of the Public Choice School in Economics. It contained a paradigm-shifter of an idea that eventually came to be known as the Coase Theorem, which states that if the transaction cost of exchange is low enough, it does not matter for economic efficiency who holds property rights over an asset (Coase, 1960). The economic agents will bargain among themselves to give the asset to the agent who can best use it and the latter will compensate the owner for his or her share in the bargain.

Suppose Pedro, who currently occupies a hectare of rice field, can produce 40 cavans\(^1\) of rice per year, net of cost. However, Juan, who is landless, is more industrious and knowledgeable; he can produce 100 cavans of rice from the same hectare of land, net of cost. At the moment, Juan produces zero cavans. If Juan cultivates the hectare, society is better off by 60 cavans and economic efficiency is served. If Juan cultivates the land, he can afford to pay Pedro 45 cavans (making Pedro better off: 45 > 40 cavans) and he can keep 55 cavans for himself (he is better off by 55 cavans). The Coase Theorem says that if the cost of bargaining and the enforcement of the contract between Pedro and Juan is fewer than 60 cavans, this arrangement (Pedro receives 45 for giving up the use of his hectare; Juan cultivates the land and claims 55) will happen. Juan and Pedro have struck a Coasean bargain! This gain, however, will not materialize if the transaction cost of the contract (contract terms have to be bargained over and enforced) is very high. Then the Coasean bargain will not happen. The transaction cost will be high, for example, if Pedro’s occupancy is not secure because Pedro’s claim to 45 cavans cannot be enforced by the courts of law. If Pedro is not sure that Juan will pay him based on the contract (enforcement is not guaranteed), Pedro will refuse to deal with Juan. The first condition for the value-creating Coasean bargain to push through is for property rights to be secure. The state can intervene by securing that property right by granting the occupant a legally binding title to the hectare of land. It turns out that perhaps billions of Coasean bargains do not occur because property rights are insecure. The loss to the economy is staggering.

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\(^1\) The cavan is a unit of measurement for rice that is popularly used in the Philippines. One cavan is equivalent to approximately 50 kilograms.
The Residential Free Patent (RFP) Law is a crucial step in securing (titling) the property rights of millions of residential plot occupiers in the Philippines so as to introduce these assets to the formal financial sector. In a weak state, such an initiative had low priority and therefore was badly pursued. The extant titling process provided cost too much for the occupants. It took a team of policy entrepreneurs, headed by Calixto Chikiamco, to identify the problem and to engineer the passage of the law over the general indifference of the state. The law will eventually drastically lower the titling cost for occupiers. The journey of the team is documented below.

The Status Quo

A landowner establishes proof of ownership over a piece of land through a valid title. The title gives the owner secure property rights, which facilitates transactions in land and enables the owner to use it as collateral for loans. The courts of law protect and enforce this right. Despite the perceived benefits of a title, however, about 46 percent of the 24.2 million land parcels in the Philippines remain untitled. Of this, an estimated 70 percent, or 7.8 million land parcels, are residential. Occupiers who pay taxes on these plots get tax declaration certificates in return.

The Residential Titling Process

There are two methods available to title and register a piece of land. One is judicial in nature; the other is administrative.

The judicial proceeding is a mode of acquiring residential lands by acquisitive prescription through open, continuous, exclusive, and adverse possession of 30 years. Judicial confirmation of an imperfect title is expensive to landowners. The process requires an average of ₱100,000 to complete. The amount includes professional fees for surveying, legal fees like lawyer acceptance and appearance fees, and other court-related costs like publication,

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2 Taken from the De La Salle Institute of Governance (LSIG) kit on The Residential Free Patent. See Faustino, Tiamson, & Chikiamco (2010).

3 Acquisitive prescription is a mode of acquiring ownership by a possessor through the requisite lapse of time. In order to ripen into ownership, possession must be in the concept of an owner, public, peaceful, and uninterrupted (Lubos vs. Galupo, 373 SCRA 618).

4 Acquisitive prescription of real rights may be ordinary or extraordinary. Ordinary acquisitive prescription requires possession in good faith and with just title for 10 years, while in extraordinary acquisitive prescription, ownership, and other real rights over immovable property are acquired through uninterrupted adverse possession thereof for 30 years, without need of title or of good faith (Lim vs. Lim, CA-G.R. CV No. 84925).

5 Foreign exchange rate was at ₱44 to US$1, as of December 2010. See http://www.xe.com/ for the latest rate.
postings, the procurement of witnesses, and payments of filing fees attendant to the proceedings. On top of this, under a best-case scenario, said proceedings will take at least 18 months to complete. In case of an opposition or appeal, the entire process can last for years, and in some instances, even decades.

The administrative procedure for titling residential lands is the patent application. In this procedure, the applicant buys the land through bidding, where he or she should outbid the others in order to be the successful bidder. In such a case, the occupant of the land does not have the preferential right over the property.

Under some conditions, Republic Act No. 730 (or RA 730)—through the miscellaneous sales patent application—allows the sale of public land parcels of not more than 1,000 square meters without the need for bidding. It is, however, still subject to appraisal.

Obtaining titles through the administrative procedure of sales patent is uncertain, since there is a bureaucratic process of determining the sale price, and the lot may be subject to bidding. The uncertainty of not knowing how much the land costs prevents applicants from using this process as a means of securing title to their lands.

Furthermore, some landowners feel that since they have already paid for the land by acquiring it from the previous occupants—although ownership is merely registered as an assignment of rights rather than transfer of title—they do not have to shell out money again to the government to acquire a title by sales patent.

**The Outcome of the Titling Process**

For the past four years, only an average of 1,200 decrees of registration were issued by the Land Registration Authority (LRA) for registration of confirmed titles, and an average of 3,200 sales patents have been issued by Department of Environment and Natural Resources (DENR), which includes not only residential but other types of lands, e.g., commercial and industrial lands. On the other hand, an average of 100,000 agricultural free patents have been issued each year. Free patent—the administrative legalization of titles without the need to pay government the value of the land—are, however, only applicable to agricultural lands.

The above illustration shows that current methods of titling residential lands are not ideal modes for mass titling. Assuming that each year 1,000 titles are issued by the court and 4,000 patents are issued by DENR, it will take 1,500 years to title all the 7.8 million residential land parcels!
Consequences

The current situation results in a number of negative impacts:

1. Land parcels, with only tax declarations as proof of ownership and not titles, are vulnerable to land grabbing and fake titling.
2. Residential homeowners are unable to borrow from banks using their residences as collateral, crimping the mortgage market.
3. Homeowners are unable to sell or even pass on ownership to their heirs except through uncertain legal assignments, increasing the likelihood of family and social conflicts.
4. Since residential land cannot be freely bought and sold, urban planning and development are hampered.
5. The supply of land in the land market is restricted, affecting land development and the like.
6. The value of these untitled lands remains low, reducing the tax take by the government from these lands.

In the Philippines, the market for land is far from efficient. There are laws, such as the nationality provisions in the ownership of land and the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER), which restrict the tradability of land, and hence prevent its most efficient use. Transaction costs are also high, including a capital gains tax rate of six percent and documentary stamp tax of 1.5 percent. The lack of a reliable land information system (who owns what, who pays taxes on it, what are its boundaries, etc.) further hampers the efficiency of land markets; without it, land markets do not function properly.

There is another huge problem in the land market, which the policy reform in this case study seeks to address: of the estimated 24 million land parcels in the country, an estimated 12 million, or about half of the total, are untitled.\(^6\)

This means that these land parcels, possibly valued in the trillions of pesos—especially those in the urban areas—are not and cannot be part of the formal land market. Without a formal title, ownership of these lands cannot be transferred legally, nor can these land parcels be mortgaged, since banks cannot accept mere tax declarations as secure collateral.\(^7\) They can only be bought and sold in the informal market, i.e., through assignment of rights, and therefore, cannot command their true value. Without a title, these land parcels

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\(^6\) Figures from DENR-LAMP (2004a) and DENR-LAMP (2004b).

\(^7\) From the BSP website, http://www.bsp.gov.ph/, interview and email query with BSP officials.
cannot be formally divided and transferred, thus complicating the problem of generational transfer and possibly leading to family conflicts. Government cannot maximize its revenue because land parcels without titles have lower values, and since they cannot be readily sold and transferred, turnover revenue from capital gains and documentary taxes is lower than what it could be.

For occupants without titles, there is the problem of insecurity of property rights. Without a registered title, the occupants are always at risk that somebody else—through fraud or machination, given the weakness of the country’s institutions—may be able to obtain a title to the property, which they have occupied and lived on over the years. Mere tax declarations are subject to legal and illegal challenges, resulting in social conflicts that clog the courts. The occupants are always at the mercy of the government, because the legal basis for the defense of their rights to their property is weak. It was clear that a new tack towards the titling of residential plots was called for: This was the Residential Free Patent (RFP) Law. Its history is narrated next.

**Narrative History of the Residential Free Patent Law**

The beginning of the Residential Free Patent reform may be traced to a telephone call made by then Socio-economic Planning Secretary Romulo Neri to Calixto Chikiamco sometime in 2005. At that time, Secretary Neri was visiting Mindanao and was coming out of a meeting with Victor Consunji, whose family owns the largest rural bank in Mindanao, One Network Bank.

Consunji had complained to Neri that, as rural bankers, they were finding it difficult to extend loans because many potential borrowers could not produce titles to their land properties. All they could produce were tax declarations. Since the Bangko Sentral ng Pilipinas (the Central Bank of the Philippines) had issued a circular prohibiting the acceptance of tax declarations as collateral, loans to borrowers against tax declarations were effectively “clean” (meaning the lender carried all the risk of default).

Neri remembered that Chikiamco had been writing about property rights. Like Neri, Chikiamco was not a professional economist, although a keen student of political economy. Although he had an undergraduate degree in economics from the De La Salle University (DLSU), Chikiamco was neither teaching economics full-time nor practicing it. He instead had a master’s degree in media management from Syracuse University. At the time Chikiamco received the call from Neri, he was engaged in business process outsourcing and internet entrepreneurship.

Contemporaneously, Chikiamco was writing a newspaper column, *Political Economy*, which he started in 1990. Over the years, his various
articles on the importance of property rights caught the attention and friendly acquaintance of Neri, who was then a professor of Finance at the Asian Institute of Management (AIM) and concurrent head of the Congressional Planning and Budget Office (CPBO).

Neri asked Chikiamco if he could study whether or how tax declarations could be made bankable, perhaps through some form of government guarantee. A study grant through the USAID-funded “Economic Modernization through Efficient Reforms and Governance Enhancement” (EMERGE) project was arranged. After thoroughly studying the matter, Chikiamco concluded that making tax declarations bankable was not feasible. Not only were there legal and regulatory hurdles, but the fact that municipal treasurers were carelessly accepting tax payments from anybody, without first verifying their ownership of the property, made tax declarations unreliable and risky as a basis for government guarantees.

In the course of his study, Chikiamco encountered Erwin Tiamson, who was then the director of the Land Management Bureau (LMB). Tiamson impressed Chikiamco with his technical knowledge of land issues. Tiamson was not a career bureaucrat, having been brought into government service in 2004 by then-Secretary of Environment and Natural Resources, Mike Defensor.

Despite the negative findings on the feasibility of making tax declarations bankable, Neri insisted that he wanted to do something on property rights reform on land. He knew—from his conversation with Consunji—that without significant reform in the titling of rural land, rural bankers would be constrained in extending loans, crimping investment, employment, and economic development in the countryside.

The Formation of the Advocacy Team

Under the direction and management of Jaime Faustino of The Asia Foundation (TAF) - Philippines, a policy reform team on property rights was constituted. It was composed of Chikiamco; Antonio Jamon, Jr., a lecturer at the University of the Philippines College of Law who had worked previously as a congressional lobbyist; Victor S. Limlingan, Ph.D., a professor of Finance at the AIM and graduate of the Harvard Business School; and Gamaliel Pascual, a former investment banker and a Harvard M.B.A. graduate. Upon the recommendation of Chikiamco, Tiamson—who had resigned from government service when then-President Gloria Macapagal-Arroyo appointed Lito Atienza as the new secretary of Environment and Natural Resources—was brought into the team.

Tiamson was a key inclusion to the TAF property rights team, bringing...
with him a strong technical expertise in land issues and an insider’s knowledge of the bureaucracy. As was true in other successful policy reform efforts, whether in telecoms or airlines liberalization, bringing in a former insider who is committed to reform and who has an extensive knowledge of how the status quo works is a key element to getting policy reform done.

Another important hire was Katherine Farrales, who served as the resident economic researcher of the team. Farrales, who has an undergraduate degree in economics from the University of the Philippines, helped collect the data and provided the team with technical expertise.

The lesson here is that policy briefings, especially before decisionmakers, stakeholders and legislators, must be backed up by strong technical, legal, and economic studies. The team had to ensure that its policy proposal could go beyond the slide presentations and withstand legal and technical scrutiny. Moreover, to reach its intended audience, the reform proposal had to be presented clearly, without the prevalence of technical jargon, and with an emphasis on the benefits. The composition of a team and its combination of skills would prove important for the success of policy reform advocacy.

**Exploration of Competing Approaches**

Initially, however, the team was divided on how to approach the problem. One side, composed of Limlingan and Pascual, favored a private sector solution, claiming that computerization of land records would facilitate land transactions. The other side, consisting of Chikiamco, Jamon, and Tiamson, believed that engaging government directly and working for a revision of laws was the answer.

Subsequently, under Faustino’s direction, the team was split into two groups to pursue their respective strategies. One group—composed of Limlingan, Pascual, and Tiamson—was known internally as the “Ateneo team,” because the grant was given to the Ateneo Center for Economic Research and Development (ACERD) of the Ateneo De Manila University (ADMU). The other group—composed of Chikiamco, Jamon, and also Tiamson—became known as the “La Salle team,” because it worked under the auspices of the Institute of Governance of the DLSU.

Before the teams got started on the problem of the unregistered land parcels, it decided to lend its support to the World Bank and AusAID-financed “Land Administration and Management” Project (LAMP). LAMP’s principal focus of reform was the legislation of the Land Administration and Reform Act (LARA), which aims to centralize all land-related agencies of the government under one department. This followed from LAMP’s recommendation to
pursue the simplification of administrative processes for all land registration matters, and to prevent duplication of such activities carried out by the DENR and the LRA.

Being involved in the LAMP effort to pass the LARA bill provided important insights and lessons to the property rights team. The LARA bill, which was first introduced in the 13th Congress in 2004, repeatedly failed to get legislative approval. In the 14th Congress, although the bill passed the Lower House, it died in committee in the Senate. It encountered strong opposition from many sectors: (a) the Department of Justice (DOJ), since the LRA would be removed from its jurisdiction and transferred to the proposed Land Administration Department; (b) lawyers, principally the lawyers from the Registry of Deeds, because the bill was seen to diminish their influence compared to the geodetic engineers in the DENR; and (c) the bureaucracy, because the merged functions under the proposed Land Administration Department were perceived to result in retrenchment of government workers.

It is worth noting that, as far back as 2004, LAMP had submitted to Congress a Free Patent Amendment bill, which was a comprehensive amendment of Commonwealth Act No. 141 (known as the Public Lands Act) relating to free patent—the administrative mode of granting title to lands that does not involve sale by public bidding (in contrast to sales patent). However, its main effort was focused on getting the LARA because it considered the centralization of land administration reform functions under a single agency the principal and most important reform. This proved to be a mistake, procedurally.

Narrowing the Focus: Residential Lands

Tiamson provided the principal insight on how to approach the main problem posed by the prevalence of unregistered land parcels whose owners could only present tax declarations as proof of ownership. Drawing on his experience regarding failed efforts at reform legislations in the past, Tiamson recommended that the main objective of the team be the passage of what the team came to call the Residential Free Patent Law.

According to him, confining the proposed legislation to residential lands would be less controversial than one that included agricultural and commercial lands. He worried—and later events would bear him out—that including agricultural lands could become controversial and drag down the entire bill. Although the bill would be only about titling of lands, and not distribution, given the highly charged atmosphere surrounding agricultural land, the bill’s intentions could be misunderstood. In the end, the team decided that it was best to go after a politically feasible—rather than a better but politically
impractical—solution. As Neri himself had repeated to the team, quoting Voltaire, “The perfect is the enemy of the good.”

The Residential Free Patent bill was therefore crafted to increase the chances of success from a political standpoint. In addition to excluding agricultural and commercial lands, size limitations based on the classification of the municipality concerned were incorporated into the bill to overcome possible objections about the bill being intended to favor big landowners.

The team reasoned that of the 12 million estimated land parcels still untitled, about 70 percent was residential, and therefore, the Residential Free Patent Law would still result in most landowners having a better shot at obtaining titles, and the development benefits would still be substantial.

Furthermore, with respect to agricultural lands, unlike residential lands, there was an existing Free Patent Law. The only big weaknesses of the existing Free Patent Law for agricultural lands were the long period of occupation required (30 years) and the restrictions imposed on the beneficiaries of the agricultural free patent (prohibition to mortgage and sell the property for five years). The team concluded that to include agricultural lands on a Free Patent bill in order to remove those restrictions would complicate the bill and hamper its passage.

**Coalition Building**

With a solution in the form of the Residential Free Patent bill on hand, the La Salle team (referred to as the “RFP team” from here on) faced the problem of forging a coalition to help push the bill. In other words, the team had to do stakeholder analysis: who cares, who can be made to care, who has the political capital, and how to get them to spend it on this reform.

The team used stakeholder mapping (See Figure 6.1) to identify and gauge the possible interests of the various stakeholders to embrace the reform efforts and their willingness to commit political capital on them. In the private sector, the team zeroed in on the Rural Bankers Association of the Philippines (RBAP) and the Chamber of Thrift Banks (CTB) as the private stakeholders who had the most interest in pursuing the reform, because the dearth of titled properties constrained secure collateral-based lending to homeowners and small businessmen.
Figure 6.1. Stakeholder Mapping in the Residential Free Patent Reform Story

Gaining the support of the RBAP was facilitated by Senen Glorioso, a rural banker from Quezon and former president of the association. Glorioso knew Chikiamco from the De La Salle University; he was a features editor of the school paper when the latter was editor-in-chief. Chikiamco reached out to his former schoolmate, and Glorioso agreed to help, convinced that the lack of secure land titles was an impediment to more lending in the countryside.

Chikiamco, Jamon, Tiamson, together with Francisco Magno, Ph.D., a professor at DLSU, head of the De La Salle Institute of Governance (LSIG), and graduate of the East-West Center, were invited, through the efforts of Glorioso, to make a presentation to the board of the RBAP during its annual meeting in Cebu on January 21, 2008. The Board readily embraced the position presented by the team and passed a resolution supporting the Residential Free Patent bill.

In the case of the CTB, the team made a presentation to its president, Benjamin Yambao, also president of the Manila Bank, who agreed with the intentions of the bill, but since he was an outgoing president, referred the team to the executive director, Suzanne Felix, who was able to get the board
of CTB to endorse the bill and pass a resolution adopting the bill during its conference.

Both the RBAP and the CTB became active supporters of the bill, providing crucial support at various stages during the legislative deliberations and sending representatives during committee hearings. CTB officers—among them Rogelio Florete, the politically influential owner of Bombo Radyo Philippines, a radio network—paid a visit to Senator Richard Gordon twice to express their support for the bill. At one stage, the CTB officers made an appearance at the Senate session hall when the bill was being heard on second reading, and where they were recognized by the Senate presiding officer, Senator Aquilino Pimentel, Senator “Jinggoy” Ejercito Estrada, and other senators on the floor. The CTB also invited Gordon to speak in one of their monthly meetings, where the senator promised that the bill would become law.

The participation and commitment of the RBAP in lobbying for the bill was no less than the CTB’s. Aside from passing various resolutions expressing its sentiment in writing to the senators, the RBAP provided the services of its legal counsel, Roberto Lucila, who reached out to the office of Senator Francis “Chiz” Escudero, his law school fraternity brother.

The willingness of both RBAP and CTB to spend their political capital for the passage of the bill was a reflection of how the team was able to zero in on a problem that both stakeholders recognized as adversely affecting their respective industries. In the phrase of economist Dani Rodrik, it was a perceived binding constraint. By providing a solution (RFP) to the problem (lack of good collateral), the team was able to generate enthusiasm and commitment on the part of the CTB and the RBAP.

**Political Champions**

Another problem that the team confronted was to find sponsors for the bill. In the House, Jamon asked a friend, Congressman Rufus Rodriguez of Cagayan de Oro (2nd District), to sponsor the bill. The latter agreed, but being from the minority opposition, was merely a member representing the minority in the Committee on Natural Resources, which had jurisdiction over the bill.

The RBAP came in to help. Glorioso asked the team to present the bill to his brother-in-law, Congressman Rodolfo Valencia of Mindoro (1st District), who agreed to the objectives of the bill and signed on as a sponsor. Unlike Rodriguez, Valencia was a member of the Liberal Party that was part of the ruling administration coalition, and was therefore part of the majority in the
Committee on Natural Resources.

Concurrently, the World Bank- and AusAID-supported LAMP, under the DENR, was pushing its version of the free patent, which differed from RFP, as it included agricultural and commercial lands, and was very liberal in area limits irrespective of the category of city or municipality. The team had concerns about the LAMP version. While it was technically and economically correct, the team believed that the LAMP version, which included agricultural lands, was vulnerable to contentious debate and delay. The team’s assessment regarding the LAMP version would later prove to be correct.

In the meantime, despite repeated follow ups, the bill was not being prioritized by the Committee on Natural Resources, headed by Congressman Ignacio “Iggy” Arroyo of Negros Occidental (5th District), brother-in-law of then-President Arroyo. The committee chairman is a powerful figure in the passage of legislation: he leads the drafting and release of the committee report necessary for the bill to be scheduled for a second reading. Many a bill dies in committees this way.

Chikiamco then decided to approach Congressman Antonio Cerilles, through the help of his brother-in-law, Antonio Olizon, a friend of the congressman and president of the Wood Producers Association of the Philippines. Chikiamco also knew Cerilles from previous engagements, such as when the latter was the DENR secretary under former President Joseph Estrada. From conversations with his brother-in-law, Chikiamco learned that Cerilles had started a program in the DENR to issue usufruct8 rights over logged-over (denuded) areas. Given his own interest in property rights, Chikiamco decided to write a column about Cerilles’ program and, as a background, interviewed Cerilles.

A lawyer, Cerilles reasoned that by giving usufruct rights to DENR personnel to plant and harvest fruit trees in logged-over areas, the program would cause the replanting of denuded areas at no cost to government, and at the same time, augment the salaries of government personnel, reducing their incentive to engage in graft. He also reasoned that fruit trees would yield economic benefits over a long period, and the usufruct owner would have an incentive to protect those fruit trees, rather than cut them down. To Chikiamco, the program was a brilliant and innovative scheme to use property rights for environmental protection and forestry production.

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8 Usufruct is the legal right of using and enjoying the fruits or profits of something belonging to another. See http://www.merriam-webster.com/dictionary/usufruct?show=0&t=1293592055.
However, when Estrada was deposed by a people power revolt\(^9\) in January 2001, Cerilles had to vacate his post as DENR secretary. The usufruct rights program was terminated.

Post-Estrada, Cerilles got elected as congressman of the first district of Zamboanga del Sur (2004-2010), first as a member of the Nationalist People’s Coalition, which joined the administration coalition supporting President Gloria Macapagal-Arroyo, then as Lakas-Kampi-CMD. Cerilles became assistant majority floor leader of the Lower House.

There were some in the non-governmental organization (NGO) community who did not want to work with Cerilles, thinking that he was a “trapo” (a “traditional politician” interested only in his pork barrel). However, and despite appearances, Cerilles was an unconventional politician. Already a lawyer and a congressman in his mid-50s, he undertook and finished a Master’s program in urban planning at the University of the Philippines. He surrounded himself with some of his younger classmates from the School of Urban Planning of the University of the Philippines and made a few of them part of his staff. When Chikiamco presented the RFP bill to him, Cerilles promised to take a look at it. Chikiamco also presented Cerilles with two books on property rights: *The Mystery of Capital* by Hernando de Soto (2000) and *The Noblest Triumph* by Tom Bethell (1998).

While other politicians would just let the books gather dust, the unconventional Cerilles did not. On the trip to the Inter-Parliamentary Union Assembly in South Africa (April 13-18, 2008), Cerilles read the books on the plane and came out a committed believer. He agreed to sponsor the bill and wrote the introductory note himself, even citing de Soto.

Not satisfied with just filing the bill, Cerilles used his influence as assistant majority floor leader and as a friend to Speaker Prospero Nograles of the HoR to get the bill heard in his committee, the Committee on Land Use, instead of the Committee on Natural Resources, where it had been languishing. This was a key development, because without the support of the committee chairman, a bill could die for lack of hearings and an approved committee report.

Cerilles promptly scheduled hearings on the bill. There was practically no opposition during the hearings, which were attended by concerned officials from the government. The only concern expressed was by Congressman Solomon Chungalao of Ifugao Province (Lone District), who wanted to expand the RFP bill to include the rice terraces and other lands within forested areas. With his determined leadership, Cerilles was able to get his committee’s

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\(^{9}\) Dubbed EDSA 2, since it is the second time that a mass uprising on EDSA deposed what people perceived was an erring president.
approval of the bill after only two hearings. The members of his committee requested that they all be listed as co-authors of the bill, and Cerilles accommodated their request. Thereafter, the committee issued its report, and the bill was passed on second and third readings. The battle to pass the bill then shifted to the Senate.

The RFP team first had to find sponsors for the bill, which it found in Senate Majority Floor Leader Miguel Zubiri, Senators Mar Roxas, Loren Legarda, and Jinggoy Estrada. However, its efforts were complicated by the decision of LAMP to push its version of the Free Patent bill in the Senate. As observed above, the LAMP bill differed from the RFP bill in several key respects. First, it covered agricultural and commercial lands, not just residential lands, which was RFP’s sole coverage. Second, while the RFP bill had area limitations based on the class of the city or municipality (initially set at 300 square meters in highly urbanized cities; 800 square meters in other cities; and 1,000 square meters in all municipalities), the LAMP version specified a more liberal area limitation of 1,000 square meters for residential, commercial, and industrial parcels. Third, with respect to agricultural lands, the LAMP bill adhered to the existing law of 25 hectares, but sought to remove all restrictions in the existing law and to reduce the period of occupation to 10 years from the previous 30 years. Finally, it sought the removal of restrictions on the sale of the titled property within five years of award and the prohibition against mortgaging the property for the same period.

The RFP team feared that the LAMP version would generate unnecessary controversy and questions, especially with respect to the coverage of agricultural lands. Because agrarian reform is a politically sensitive, emotional, and touchy issue, the team feared that the bill could be interpreted as circumventing land reform, although the bill was only about titling and not at all about distribution of land.

Its fears were soon proven to be correct, but the team had no choice because the LAMP staff—some of whom had previously worked in Congress—mounted an aggressive effort to push its version at the Upper House. The team was able to get Senator Richard Gordon, head of the Committee on Constitutional Amendments and Revision of Laws, under which the bill would be heard, to sponsor its version. Likewise, Senators Gregorio “Gringo” Honasan and Miriam Defensor Santiago agreed to co-sponsor. Ironically, Honasan would later pose objections to the bill.

Sure enough, during the very first Senate committee hearing called by Gordon, questions were raised on the agricultural section of the bill, such as on the limitation of qualified applicants and the definition of “head of the family.” Gordon had to assign a technical working group (TWG) to refine the
bill. Nonetheless, during subsequent hearings, Senator Juan Ponce Enrile repeatedly raised objections to the agricultural free patent portion of the bill, especially as to whether the DENR had the qualified personnel in the field to make a determination of who were the actual occupants and owners of the land.

In 2008, an unforeseen political event happened. As Gordon was about to issue the committee report on the LAMP bill, a Senate reorganization took place. Senator Manuel Villar was deposed as Senate president by his colleagues, and Enrile was elected in his place. A concomitant reshuffling of the committee chairmanships took place. Gordon moved to head the Blue Ribbon Committee, while Escudero assumed the chairmanship of the Committee on Constitutional Amendments and Revision of Laws, which was in charge of the LAMP bill.

With a new committee chairman in place, the committee report on the bill had to wait in line for a new approval. Since Escudero was unfamiliar with the bill and had not participated in previous hearings, the work in the Senate practically started from scratch. After many weeks, and after strong lobbying by both the RFP team and the LAMP staff, Escudero finally agreed to preside over a hearing on the LAMP version of the bill. All the stakeholders were present, including representatives from the RBAP and the CTB, who expressed their support for the bill.

After the hearing, the RFP team expected that the committee report would finally be issued. But weeks passed and still no committee report was issued. When told of the problem, the RBAP offered to help. It asked its association lawyer, who was a fraternity brother of Escudero and a member of his staff, to arrange a meeting with his legislative staff. The meeting was held, but the team could not get a commitment from Escudero’s legislative aide who still had to review the bill. More weeks passed and still no report. Concerned about the long delay, the team contacted the father of Senator Escudero, Congressman Salvador Escudero, who was inclined to help, as he was a sponsor of the LAMP version of the bill in the Lower House. As luck would have it, Congressman Escudero’s special concern was education. He told the team that many public schools in the countryside had no titles to the lots they were occupying, since those lots were previously donated to the government by private individuals who also did not have titles. However, these lots were never titled in favor of the government, because titling involved a long process of presidential proclamation under present law. Consequently, a number of public schools were insecure about their land property rights. When squatters would move in to occupy those lots, the Department of Education (DepEd) could not do anything about it. Other times, the heirs of the donors would move to reclaim
ownership of the lands in court and succeed.

Congressman Escudero recognized the need for a Free Patent bill with a provision for allowing special patents for lands occupied by public schools. This was important to help the public education system, according to the congressman.

Still, for some reason, no committee report was issued. It could have been that Senator Escudero was preparing for his presidential candidacy, and being new to the committee, was unfamiliar with all of the issues relevant to the bill. Instead, he decided to offload the task of issuing the committee report and defending it on the floor to the former chairman of the committee, Gordon, who gladly accepted the assignment. After the committee report was finally issued and signed by the committee members, the bill moved to the floor for deliberations.

On the floor, Enrile questioned why the bill did not specify that actual surveys be done, so an amendment was introduced prohibiting table surveys and requiring the use of actual surveys. Senator Pia Cayetano asked that gender sensitivity be incorporated into the bill. Senator Edgardo Angara introduced a special provision on special patents for public schools. Senators Miguel Zubiri and Aquilino Pimentel, both from Mindanao, mentioned that there are many former military lands in Mindanao and moved to amend the bill to include military lands that had been delisted.

However, an objection from Honasan threatened to delay the bill indefinitely. Honasan, the author of the extension of the Comprehensive Agrarian Reform Law (CARL), said that the Free Patent bill, by covering agricultural lands up to 24 hectares, would be in violation of CARPER. His chief of staff, a lawyer, expressed strong objections to the bill by stating that it would go against the agrarian reform law.

Tiamson, who knew Honasan personally, explained to him and his staff that the Free Patent bill was about titling, not redistribution. Furthermore, the limit of 24 hectares was contained in existing laws and in the constitution. Nonetheless, Honasan stuck to his objection. Finally, a compromise was struck: the Free Patent bill would contain a limitation up to five hectares, similar to the CARPER. Only when the amendment was introduced did Honasan remove his objection.

In actuality, deliberations in the Senate did not proceed so predictably or smoothly. Many unforeseen events interposed to delay deliberations on the
bill, such as the typhoon Ondoy disaster,\textsuperscript{10} the privilege speeches of Senator Panfiolo “Ping” Lacson on the Dacer-Corbito double murder case,\textsuperscript{11} the extended debate between Senator Joker Arroyo and then-Senator Benigno Aquino III on the creation of a legislative district in Camarines Sur,\textsuperscript{12} and the Maguindanao massacre and the consequent proclamation of martial law in Maguindanao.\textsuperscript{13} The agenda of the Senate had to give way to these events, and deliberation on the Free Patent bill was often delayed.

As the elections were scheduled for May 2010, the bill had to be passed in 2009. The RFP team feared that the senators and congressmen would naturally be so distracted by the coming elections that they would be unable to pass the bill.

The Senate finally passed the bill on the third and final reading on October 12, 2009. The team expected the next phase—the bicameral deliberations (also, bicameral conference or bicam) to reconcile the Senate and House versions—to be a cakewalk. It was not to be.

The bill encountered a few problems. First, Senator Gordon was preparing to run for president and became very busy elsewhere. Second, Congressman Cerilles objected strongly to the Senate version, which included agricultural and commercial lands. He particularly singled out the agricultural provision, stating that it would go against the land reform law extension, CARPER.

The bicam threatened to go into a deadlock. Time was running out, with only a few days to go before the House and Senate adjourned for the Christmas break. Waiting for Congress to resume in January was a risky move, because with the elections coming, politics could shove aside the legislative agenda. (True enough, when session resumed in January, the Senate was consumed with the debate over the censure motion against Villar on the C-5

\textsuperscript{10} Typhoon Ondoy (international designation: Tropical Storm Ketsana) struck Northern Luzon, including Metro Manila, on September 26, 2009 and left 464 dead and ₱11 billion worth of damages to infrastructure and agriculture. See NDCC (2009).
\textsuperscript{11} On November 24, 2000, publicist Salvador “Bubby” Dacer and his driver, Emmanuel Corbito, were abducted on Osmeña Highway in Metro Manila. Five months later, their charred remains were found in a creek in Cavite. See Dacer-Corbito double murder case timeline. (2010).
\textsuperscript{12} Then-Senator Aquino filed a petition questioning the constitutionality of the law that created a new district in Camarines Sur, allegedly to suit the political interests of Representative Diosdado Ignacio Arroyo, son of President Arroyo. In April 2010, the Supreme Court ruled against Aquino’s petition (Requejo, 2010).
\textsuperscript{13} On November 23, 2009, 57 unarmed civilians were massacred along an off-road hillside in Ampatuan town, Maguindanao province. Many of the victims were women, 30 of them journalists. On December 4, 2009, President Arroyo declared martial law in Maguindanao (Dalangin-Fernandez & Burgonio, 2009).
Finally, Senator Gordon—recognizing that time was running out and seeing the political benefits from passage of the bill—gave way and allowed the House version to prevail. The signatures of the bicam committee members were obtained on the penultimate day of the Senate session, and the approval of the bill was made literally on the last day before the Christmas break.

The approved bill finally passed into law when President Arroyo signed the bill on March 9, 2010.

**Lessons and Conclusions**

Policy reform consists of three phases: (a) analysis, (b) strategy, and (c) action. In the analysis phase, policy reformers must clearly understand the status quo. They must first understand how the status quo hurts social welfare. Part of the analysis involves understanding the incentives, motivations, and business models of the various players (how they make money or how they benefit from the status quo), and how the reform will affect or threaten their various business models. This will suggest the degree, strength, and intensity of their opposition to a particular reform. Identification of the entrenched vested interest is most important.

Almost all winning strategies involve forming a coalition of stakeholders because reform must confront entrenched political and economic interests. Policy entrepreneurs must undertake stakeholder mapping (See Figure 6.1) to understand where each stakeholder is coming from and their degrees of commitment and political influence. Mobilization of the pro-reform stakeholders is a must. Coalition-building should involve strong technical preparation and the marshalling of the team’s social, political, and personal capital to cobble together a supportive alignment to overwhelm strong political opposition from existing vested interests.

Building a strong team to secure all the pieces together is important. The team should consist of technically prepared and reform-committed individuals whose expertise complements each other.

In this regard, taking on board a former insider as team member or consultant is clearly helpful in order to understand the sometimes Byzantine ways bureaucrats or rent-seekers operate and profit from the status quo. In the RFP case, Tiamson, former head of the LMB, was a key hire due to his mastery.

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14 In September 2008, Senator Lacson exposed a ₱200-million congressional insertion in the 2008 national budget for the construction of the C-5 road extension, from which the company of Senator Villar, a presidential candidate, allegedly gained ₱6.22 billion through illegal means (Legaspi, 2010).
of the technical issues and his insider’s familiarity with the bureaucracy.

Strategy follows from the analysis, but it must consider situations where first-best solutions may not be politically practicable. The packaging of the reform—so that the intended beneficiaries can understand it and will spend political capital for it—is crucial. In experimental psychology, this comes under the rubric of framing.\(^{15}\) Correct framing motivates action. The policy reform must be opportunistic, i.e., it must ride on any existing movement or event (decentralization, elections, globalization, controversy or scandal, etc.) that will improve its chances of success.

Timing and flexibility are a key part of political action, because sometimes an unforeseen confluence of events presents an opportunity to make a breakthrough. Timing involves an element of luck or unplanned opportunity. However, in almost every case, the unforeseen opportunity can go begging if not preceded by strong preparation. It is, therefore, important for policy entrepreneurs to be prepared but also to be patient, committed, and opportunistic.

The traditional approach tends to emphasize structured processes and reports, scheduled activities, and auditable participation. By contrast, the political-economic reform process is almost never linear and sequential.

Hiring and compensation practices also tend to favor academic and technical qualifications over commitment and social and political skills, which are hard to document in a résumé. We now contrast this approach revealed in the RFP with the traditional approach as instanced in the case of the LAMP.

The LAMP, funded by the World Bank and AusAID, was at best of limited success and may provide useful lessons for future developmental reform efforts. No less than the AusAID evaluation team has concluded that the program failed to improve land administration in the country, and that some of the reforms it was pushing—such as the LARA—failed to pass legislative muster despite a long and expensive effort to do so (Llanto, Riddell, & Orbeta, 2010).

LAMP’s failure may be due to having a national agency (in this case, the DENR) as a partner, which may have its own agenda. The centerpiece of the LAMP reform was the centralization of land-related functions under one agency (LARA). However, the reform (LARA) was seen as centralizing authority with powers in a new line agency monopolized by DENR officers at the expense of other departments (i.e., LRA, which is under the Department

\(^{15}\) The psychological principles that govern the perception of decision problems and the evaluation of probabilities and outcomes produce predictable shifts of preference when the same problem is framed in different ways. See Tversky and Kahneman (1981).
of Justice). LARA also got shot down by opponents, who saw it is a means to retrench parts of the bureaucracy and enhance the power of the geodetic engineers (DENR) at the expense of lawyers in the Registry of Deeds. The issue may have been false, but opponents saw it as an issue with which to rally opposition and to get support from senators. Other options, like better coordination of land administration functions at the local government level without merging parts of the bureaucracy, were never considered.

Furthermore, the concerned national agency (DENR) was heavily politicized, and there were numerous changes in leadership, complicating the reform effort. Unlike the local government executives, who saw improved land administration as a key to increased revenues, the national agency had no real incentive to push for reform.

Still, developmental aid continues to flow largely to national government partners with the aim to effect reform, such as money being given to the Bureau of Internal Revenue (BIR) to improve revenue performance. This approach is very limiting as these government partners have their own agenda. Worse, if that “reform” will upset the business model (including the perks) of insiders, the reform will most likely be killed or diluted by insiders. For example, the computerization of BIR operations, which has been funded by foreign aid and foreign loans for decades, has failed to significantly improve revenue performance. While computerization is a technically sound solution (it promotes efficiency and transparency in tax collection and administration), the reform failed to consider that the corrupt personnel within the agency would see it as a threat to their business model, and naturally would act to subvert its effectiveness.

In contrast, the RFP team was, as it were, a guerrilla operation of sorts that worked with various government agencies and stakeholders, without the institutional constraints that LAMP had. It was free to consider a number of options and to decide how best to push a reform forward.

The factors in the success of the passage of the RFP bill may be summarized as follows: (a) use of the “team” concept with varied technical expertise that are mutually complementary; (b) inclusion of a former insider in the team, with a strong knowledge of how bureaucracy works; (c) strong technical preparation, including studies and presentations showing the objectives and impact of the bill’s passage; (d) sound political analysis, which anticipated possible objections to the bill; (e) undertaking stakeholder mapping and mobilizing the key stakeholders to spend political capital in behalf of the bill; (f) use of all types of political capital (family ties, fraternal ties, personal friendship) by a committed team to push the reform forward and to overcome obstacles; and (g) enlightened support from TAF and USAID, which involved
patient and non-traditional efforts at reform.

Pushing for a reform as political as passing a law is not a linear, sequential, and predictable process, unlike holding a seminar or conducting a study. In the case of the RFP bill, there were lengthy periods when seemingly nothing was happening. There were also instances where discussions would take place over lunches or dinners, rather than in formal settings like seminars. These activities do not fall within the traditional use of a log frame, where the metric of success is often based on the number of attendants in a seminar or the number of hours doing research. Although control points must still be established, trust and patience must underlie the relationship between the funder-managers and the team.

If development agencies want to work on policy reform involving binding constraints or high-impact reform, they may have to rethink their traditional approach because the reform process is inherently political. There are entrenched, vested interests who profit from the status quo and who will block reform. Therefore, purely technical solutions may not work because the anti-reform elements either block the reform or subvert it.

References


The Batangas Port is one of the busiest in the country. Agricultural products coming from Mindoro, Visayas, and Mindanao pass through this port to get to Metro Manila.

Photo by Richard Abrina

Winged vans bound for Panay Island are loaded into a RO-RO vessel at Bacolod City's BREDCO Port.

Photo by Richard Abrina

A typical day at the arrival area of the DMIA, which now serves as a hub for budget airlines, like AirAsia, Asiana Airlines, and Cebu Pacific, among others.

Photo by the CIAC
The Ninoy Aquino International Airport (NAIA) Terminal 3 is now a hub for Airphil Express, Cebu Pacific, and other low-cost airlines. It also services Philippine Airlines.

Photo by Mithril Cloud

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Photo by Erwin Tiamson

Erwin Tiamson (3rd from right, first row) poses with the Chamber of Thrift Banks participants at the RFP orientation, May 27, 2011.

Photo by Reynante Orceo
Erwin Tiamson makes a presentation at an RFP seminar for the Chambers of Thrift Banks, Makati City, organized by the Foundation for Economic Freedom.

Photo by Reynante Orceo