

Leaseback Arrangements: Reversing Agrarian Reform Gains in the Philippines¹

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The middle-income stature of the Philippines, under the Human Development Index, offers no reprieve to hunger and poverty in the countryside. With about 33 percent of Filipinos living below the poverty line, 3 out of 4 poor (75 percent) people are rural folk² and majority are women. Characterized by disparity of income and wealth, poverty, as reflected in rural realities, primarily means inequitable access to and control of the land -- the motivating force for many of the country's revolution and revolts in the past century.

One of the country's recent landmarks in the struggle for land and social justice is the Comprehensive Agrarian Reform Program (CARP). Implemented in 1988, CARP is considered as the most comprehensive as it covers all agricultural land regardless of crop and forms of ownership. For nearly two decades now, CARP is touted as the longest running program implemented under a democratic setup. The program tries to address rural poverty and agrarian problems by "restructuring the agrarian landscape in the country, aimed at promoting social justice and improving farmers' incomes and productivity". Inclusive and participatory in principle, the program is supposed to benefit not only farmers but also farmworkers—both men and women. It requires the potential agrarian reform beneficiaries (ARBs) to form cooperatives or associations, which in essence promotes collective behavior or working together to make the land productive.

However, despite these progressive and redistributive elements, the program is beset with ironies, inconsistencies, and shortcomings. For one, although originally intended to address rural inequity and injustice, the Comprehensive Agrarian Reform Law (CARL) or RA 6657, which instituted CARP, was passed by a landlord-dominated Congress. Crafted within a democracy, expectedly, the law is a product of a compromised agreement to placate the demands of vested interests and (warring) parties. It, therefore, preserved the aspirations, tensions and conflicts of different vested interests of the agrarian reform debate in the mid-80s. These are manifested not only in the (cumbersome) way that the program is being implemented but also with the internal inconsistencies and existence of non-redistributive elements of the law.

Secondly, it is a program that operates in an inhospitable neoliberal and market-friendly environment. The agricultural land redistributed to the farmers and farmworkers are not exactly free—the beneficiaries pay for the land awarded to them. Land is valued at a prescribed value (with a given formula depending on the crop produced in the land). This serves as "just compensation" for the landowners. Landlord resistance, the difficulty of land valuation and the consequential delay of land transfer are major "bottlenecks" that hobble the program's implementation. These are likewise the biggest reasons why a significant number of ARBs deem CARP as a failure.³ As it operates under a democratic setting, it is expected that differing interests and parties would align their forces for or against the program.

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² See www.nscb.gov.ph. Also see "Philippine Agrarian Reform: Partnerships for Social Justice, Rural Growth, and Sustainable Development", Country Paper on Agrarian Reform and Rural Development in the Philippines presented by Secretary Nasser Pangandaman, Department of Agrarian Reform, Philippines, in the International Conference for Agrarian Reform and Rural Development (ICARRD), Porto Alegre, Brazil on March 7-10 2006.

³ See CARP Impact Assessment Studies, 2000.

An (almost) iconic example of this inconsistency and compromise is the derail of redistributing commercial farms and plantations⁴ for a ten-year period from 1988 to 1998. This was the response of Congress when agribusiness and landlords mounted a powerful lobby for the exclusion of commercial farms and plantations during the national agrarian reform debate. These commercial farms and plantations comprise the most contentious landholdings, where stiff landlord resistance is expected and government's political will to implement reforms remains irresolute. Pushing back the advent of reform, the period allowed anti-reform forces to skirt around the law and ultimately evade the program through various mechanisms such as land conversions, among others.

The end of the deferment period on commercial farms in 1998 required government to once again tackle the twin problems of: (1) distributing and providing adequate support services to "expensive"⁵ private landholdings with a limited agrarian reform fund (ARF); and (2) breaking the growing resistance of big landowners who took advantage of the deferment in the first place to retain control of their landholdings and evade land distribution.

Two options were proposed to respond to these two problems. One was the introduction of a home-grown version of the controversial "market-assisted land reform" (MALR) where small farmers or agricultural workers can directly negotiate with the landowners to determine the land price as well as the other terms for the transfer of land ownership. The other proposal was the "alternative venture agreements" whereby agrarian reform beneficiaries (ARBs) may enter into business, "ideally" after land distribution has been accomplished, with the former landowners or corporations. Under Department of Agrarian Reform Administrative Order No. 2, series of 1999 entitled the "Joint Economic Enterprise for Productivity or JEEP," the alternative venture agreements can be in the form of lease contracts; joint ventures; production, processing and marketing agreements; build-operate-transfer; management contracts; and service contracts.

Both the abovementioned options have been roundly criticized because of their conceptual flaws in that the state virtually abandons its mandate to redistribute land and to provide adequate support services. Moreover, both schemes do not effect a drastic change in control over the land. They defeat the essence of agrarian reform by giving the former landowner or the corporations control over the operation of these landholdings (Mendoza 1999). The terms under such schemes usually turn out to be disadvantageous to ARBs. In some cases, such arrangements have been used to evade redistribution under agrarian reform. For instance, the land has been given to a set of beneficiaries chosen by the landowner and not to the actual tillers of the land. The landowner can then easily enter into such schemes with their chosen beneficiaries; virtually maintaining control over the land resource. These are the reasons why peasant organizations and agrarian reform advocates reject alternative venture agreements.

This paper attempts to assess the implementation of one form of alternative venture agreements, referred to as leaseback arrangements. It will deconstruct the leaseback scheme: examine the legal framework behind it; the normal process of its implementation; its coverage so far; the impact of these leaseback agreements on the agrarian reform beneficiaries in the context of the over-all implementation of the agrarian reform program. The basic question that

⁴ Commercial farms and plantations are used here interchangeably.

⁵ Under the Comprehensive Agrarian Reform Law (CARL), the Philippine government thru the Department of Agrarian Reform acquires land at a prescribed value (see above introduction). The problem after the deferment of commercial farms and plantations is the demand of the landowners to compute the "just compensation" based on the market value plus value of improvements invested in these lands (e.g. machinery, roads, infrastructure, etc.). At this rate, the land price is sometimes pegged at PhP 300,000 (US\$ 6,000) per hectare; making it impossible for a farmworker who earns at most a meager US\$ 3 per day to pay for the land amortization. Thus, commercial farms and plantations are by far the most expensive lands to be redistributed by the government.

this paper will address is “*who benefits from such arrangements?*”. Lastly, this paper will present alternatives to the implementation of these leaseback agreements.

Defining Leaseback

Leaseback arrangements have been defined as one major agrarian reform modality in the plantation sector or commercial farm plantation in which a cooperative of worker-beneficiaries in a given plantation may enter into a land-use agreement with a multinational or agribusiness corporation. This is promoted in cases where dividing the land is judged by the government (in this case the Department of Agrarian Reform) as economically unsound or not feasible. (Ofreneo 2000) In other words, dividing the land makes for smaller parcels which is sometimes not enough to make a decent living for a farming family (e.g. how do you support a family of six with only half a hectare of land?).

Under JEEP, leaseback contracts are contracts “where the beneficiaries [of the agrarian reform program] bind themselves to give to the investor the enjoyment of the use of their lands for a certain price and for a definite period.” In effect, the investor whether it was the former landowner or a corporation (national or foreign) will acquire usufruct rights over the lands for an agreed period while the “beneficiaries” are usually hired as workers or tillers in their awarded lands.

The farmer or cooperative shoulders the amortization and the land taxes for the land. In some cases, the lease is only binding to the farmer or cooperative while the private investors are usually given the option to move out of the lease area or to lease the same property to another possible investor. (TWSC 1983)

Legal Framework

The policy of allowing lease and other such modalities in the distribution and use of agrarian reform lands spring from the declaration of state principles in enacting agrarian reform as contained in the Comprehensive Agrarian Reform Law (CARL)⁶ that was promulgated in 1998,

To wit, “*The State may lease undeveloped lands of the public domain to qualified entities for the development of capital-intensive farms, traditional and pioneering crops especially those for exports subject to the prior rights of the beneficiaries under this Act.*” (Underscoring supplied)

The principle clearly pertains to the lease of lands in the public domain. But similar provisions in CARL and the amending law Republic Act (RA) 7905 (An Act to Strengthen the Implementation of the Comprehensive Agrarian Reform Program and for other Purposes) support such modalities even in private agricultural lands.

In a leaseback study, Dr. Rene Ofreneo noted that CARL supports several modalities in the distribution of plantations and commercial farms. These are under Section 8 (lands held by multinational corporations) and Section 29 (other farms owned or operated by corporations or business associations), which set out in detail the processes entailed in the distribution of these lands where they are already under lease, management, grower, or service contracts. Ofreneo

⁶ Republic Act No. 6657.

also noted that CARL did not set any time limit for leaseback agreements nor did it prescribe any specific terms to which the parties in leaseback agreements should adhere.

Other provisions in CARL, like Section 32 (on production-sharing) and Section 44 (as amended by RA 7905 on February 23, 1995) describe how such schemes as leaseback, joint venture agreements could be availed of and identify who would be in charge of processing and approving such schemes. There is no limit as to who initiates these alternative venture agreements. However, in most cases, the former landowner or an investor (whether individual or corporation or former lessee of the land) prior to the redistribution of the landholding negotiate alternative venture agreements with the potential beneficiaries. The agreements should *“optimize the operating size for agriculture production and also promote both security of tenure and security of income to farmer beneficiaries: Provided, that lease back arrangements should be the last resort.”* (Section 44)

The Presidential Agrarian Reform Council (PARC), the highest policy making body for agrarian reform, issued PARC Executive Committee Policy Order No. 1 in 1997. This was the policy guideline for the operationalization of leaseback, joint venture agreements, and other such schemes. But such schemes were never openly encouraged until the Estrada administration in 1998 to 2001, which incidentally is the start of the reform process for commercial farm plantations.

In 1998, schemes like leaseback, joint ventures, contract growing, etc. became part of the official strategy in the implementation of agrarian reform. As elucidated by then DAR Secretary Horacio “Boy” Morales (1998), the intent of the Estrada administration was to *“create an environment that will attract external investors”* and to explore *“different models of partnerships involving agribusiness ventures for the post-land distribution arrangements between farmers and the processors/traders.”* It was touted as a “small brother-big brother scheme” but to date the first “big brother” Danding Cojuangco⁷ has yet to effect the transfer of ownership of his hacienda to the “small brothers”.

This strategy was later detailed in two controversial administrative orders. The first was Administrative Order No. 9, series of 1998, which prescribed the “Rules and Regulations on the Acquisition, Valuation, Compensation and Distribution of Deferred Commercial Farms.” The second was AO 2 of 1999 or JEEP, referred to above, which fleshed out the rules and regulations governing joint economic enterprises in agrarian reform areas. AO 2 also abolished the maximum 10-year period for lease arrangements prescribed under AO 9.

To implement all these rules and regulations, the Alternative Venture Agreements Task Force, Working Group and Secretariat were created.⁸ On 22 October 2005, the composition of the Alternative Venture Agreements Task Force, Working Group and Secretariat were amended.⁹

The AVA Task Force

The Alternative Venture Agreements Task Force (AVA TF) is chaired by the Undersecretary of the Support Services Office (SSO) of the DAR and is supported by an AVA TF Working Group

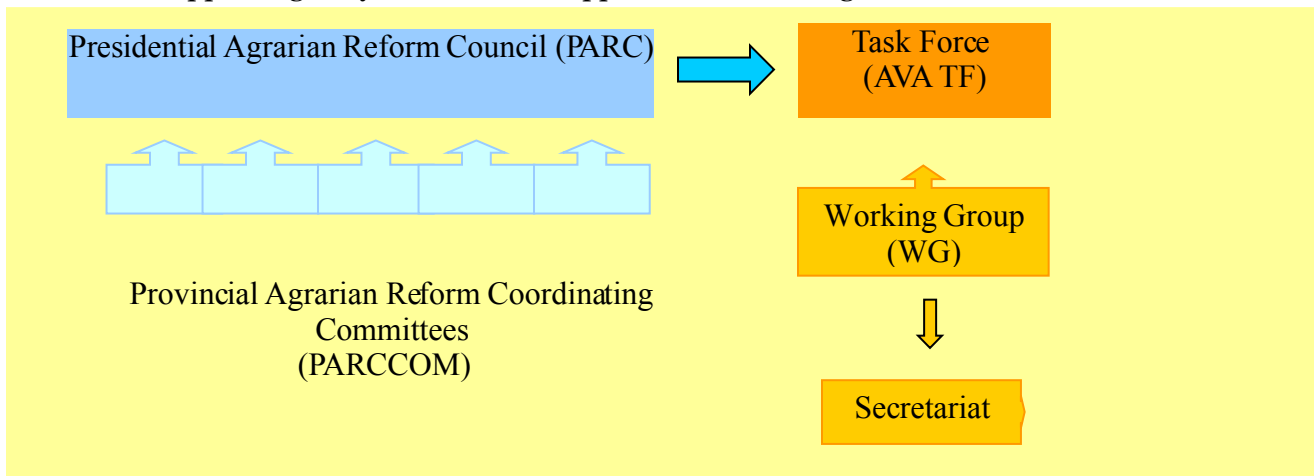
⁷ Eduardo “Danding” Cojuangco earned the title “godfather of land reform” when he announced that he will be transferring his 500++ hectares of hacienda in Negros Occidental to his farmworkers under the JEEP scheme of the then Morales administration in 1999. To date, however, no real land transfer has been done and the farmworkers are being made to sign blank sheets of paper every month before receiving their salary.

⁸ Special Orders No. 325 and 789, series of 2003.

⁹ Special Order No. 731, series of 2005.

and an AVA TF Secretariat. In an interview with Assistant Director Letecia Damole, who heads the AVA TF Working Group, she said that the AVA TF, though officially created in 2003, only started functioning after Special Order 731 was passed in 2005.

The main work of the AVA TF is to render technical support to the PARC, and the Provincial Agrarian Reform Coordinating Committees (PARCCOM), in processing the Alternative Venture Agreements that have been passed to the two bodies for approval. Under RA7905 which amended CARL, it is primarily the function of the PARCCOM to “process applications for lease back arrangements, joint-venture agreements and other schemes that will optimize the operating size for agricultural production and also promote both security of tenure and security of income to farmer beneficiaries.” PARCCOM usually does the initial processing but the PARC is the final approving body for these AVA applications. (see diagram below)



The main functions and responsibilities of the AVA TF are the following:

- (1) Evaluating alternative venture agreements (AVAs) duly endorsed by PARCCOM to the PARC, for approval/disapproval;
- (2) Recommend contract amendments to the AVAs being reviewed to ensure equitable and sustainable arrangements between investors and agrarian reform beneficiaries (ARBs);
- (3) Recommend up-to-date/progressive policy and sound strategies for the prompt review of proposed AVAs and to enhance the economic condition in agrarian reform areas;
- (4) Provide updates and present findings to the PARC regarding the evaluation of AVA proposals; and,
- (5) Monitor compliance of contracting parties to approved AVAs.

Given the workload of the members of the AVA TF, the Working Group directly performs the functions mentioned above and passes its recommendations to the AVA TF for adoption/rejection by the PARC. Meanwhile, the Secretariat acts as support staff for the AVA TF Working Group.

Thus far, according to Assistant Director Damole, the PARC has only approved two AVAs out of the twenty applications that have been forwarded to them for review and approval. Damole pointed out that the two AVAs were approved prior to the creation of the AVA TF in 2003. She confirmed, however, that some of the AVAs forwarded to them for review and approval, are already being implemented at the ground level. These include the Cojuangco Joint Venture Corporation in Negros Occidental and Davao, and the leaseback arrangement with the Floirendos in Davao City and Davao del Norte.

When asked how the AVA TF responds to violations in the implementation of the AVAs, Damole answered that at this stage the AVA TF can only recommend contract amendments and to monitor compliance of contracting parties to approved AVAs. She said that actual revocation in cases of violations would be decided by the PARC as the final approving body for the AVA applications.

Distribution of Lands Covered by AVAs

According to the records, the voluntary land transfer/direct payment scheme (VLT/DPS) is the main mode of distribution in the leaseback arrangements and other AVAs being reviewed by the AVA TF. Borrás (2005) noted that the VLT/DPS mode of distribution often has two important features: (1) “mutually” acceptable terms between the landlord and the peasant—including the set of acceptable beneficiaries, and; (2) a post-“land transfer” joint venture scheme that can be submitted to a multinational corporation. He also pointed out that the offer of landowners under VLT/DPS is usually cancelled in cases where another set of beneficiaries (not the set of potential beneficiaries endorsed by the former landowner) were selected by the Department of Agrarian Reform.

Assistant Director Damole confirmed that most landowners usually prefer the VLT/DPS since they can peg the price they want for their landholdings and it usually requires less documentation than the other modes like compulsory acquisition (CA). She admitted that in some cases, the alternative venture agreements have preceded the actual VLT/DPS coverage or transfer of the landholdings. This has compelled them to recommend the cessation of the AVAs until the land distribution process is actually completed. An example of which is their recommendation to temporarily suspend the AVA implementation in one of the Floirendo¹⁰ landholdings in Davao.

The VLT/DPS is one of the most often criticized modes of distribution under CARP since it exposes potential beneficiaries to possible abuse by the former landowner/corporation. Since VLT/DPS usually entails direct bargaining between landowners and beneficiaries, there is no guarantee that potential ARBs will not be duped into paying higher than market prices for the landowner’s landholdings as government’s role is usually relegated to assisting potential ARBs in accessing and securing loans for land payment. And this has become the norm, i.e. the land price set is usually much higher and there are often strings attached to the distribution such as a set of (negotiated) handpicked beneficiaries to replace the actual tillers or farmworkers.

Leaseback Coverage

¹⁰ The Floirendo family is one of the biggest and most powerful landowners in Mindanao. Rather than directly transferring their lands to farmworkers, they have negotiated AVAs with their chosen beneficiaries who are mostly not the actual tillers or farmworkers.

At present, there is no available data on the actual number of leaseback arrangements being implemented, the number of hectares covered by these leaseback arrangements, and the number of beneficiaries who entered into these leaseback arrangements. The same is true of the other types of AVA (contract growing, joint ventures, etc.).

The only available data so far is the list provided by the AVA TF that only covers applications that have been forwarded by the PARCCOM. The list only covers the 9,869.601 hectares covered by applications for AVAs being reviewed by the AVA TF and is not limited to leaseback arrangements.

This figure does not include those lands covered by leaseback agreements way back in 1988 (Ofreneo, 2000). These are the 8,860 hectares covered by the Dolefil (DOLE-Philippines) and DARBCI (Dolefil Agrarian Reform Beneficiaries Cooperative Inc.) leaseback agreement in Bukidnon and the 6,827 hectares covered by the FPPI or Filipinas Palmoil Plantations Industries Inc. and NGPIMPC/NGEIMPC (NDC Guthrie Plantation Inc Multi-Purpose Cooperative/ NDC Guthrie Estates Inc. Multi-Purpose Cooperative) leaseback agreement in Agusan del Sur.

Table 1. Estimated CARP Lands Subject to Proposed and Approved AVAs

	Location	No. of Hectares
AVA Task Force List	Nationwide	9,869.601
Dolefil and DARBCI	Bukidnon	8,860.000
FPPI and NGPIMPC/NGEIMPC	Agusan del Sur	6,827.000
Total		25,556.601

Source: AVA TF List, Ofreneo (2000)

It is highly possible that there are other leaseback agreements and other AVAs that are being implemented at the local level that have not been forwarded to the AVA TF for approval. A case in point is the leaseback arrangement in Bukidnon that will be discussed in length in the preceding section. The AVA TF admits that it is still in the process of consolidating data and releasing a set of new guidelines that will help them better monitor and keep track of AVAs being implemented and to impose sanctions where it is needed.

While it is near impossible at this point to come up with a better estimate on the number of CARP awarded lands covered by leaseback and the other AVAs, one can surmise that such agreements (leaseback, contract growing, joint ventures, etc) are prevalent in most of the deferred commercial farms that were distributed after 1998. Romulo dela Rosa (2005), **who has done extensive research on agribusiness in Mindanao**, asserts that agribusiness companies like Dole and Del Monte actually “invented the leaseback scheme to circumvent CARP”.¹¹ There are also reports from farmworkers that such schemes are actually in effect in the land that they work on. The inadequacy of government support services often forces farmworkers to enter into such arrangements (since they lack the necessary capital to continue making the land productive). In most cases, the AVAs are a precondition to the redistribution of

¹¹ See Romulo dela Rosa’s “Corporate Farming Won’t Ease Hunger in Mindanao”, Philippine Daily Inquirer, October 17, 2004; and “Mindanao: The Experience in the Banana Sector of Davao del Norte” in *On Just Grounds: Struggling for Agrarian Justice and Citizenship Rights in the Rural Philippines*, eds. Saturnino Borrás, Jr. and Jennifer Franco, Quezon City: 2005.

the land, i.e. the landowner will only allow coverage under CARP if the potential beneficiaries enter into an AVA with them.

Data from July 1999 of the DAR Planning Division show that at least 1,935 commercial farms covering an area of 67,556 hectares were supposed to be distributed after the commercial farm deferment that expired in 1998. In Davao, there are 22 plantations under deferment or those that have yet to be distributed, nine of which are already under lease contracts (Homer et al 2000) and will probably remain under new lease agreements even after the land is distributed under CARP.

A Tale of Leaseback Arrangement in Bukidnon

Located in the heart of Mindanao, Bukidnon is the sixth largest province in the country. Dubbed as a “highland paradise”, it is surrounded by gently rolling plateau cut by deep and wide canyons of the Polangui, Tagoloan, and Cagayan rivers and their tributaries, and densely forested mountains. Bukidnon’s soils are considered to be some of the most fertile in the region and even the country. With heavy, evenly distributed annual rainfall and cool climate, Bukidnon is of great importance agriculturally. Considered as the *food basket* of Mindanao, it is a major producer and supplier of rice, corn, sugar, coffee, rubber, cassava, flowers, fruits and vegetables, poultry, hogs and cattle, and pineapple in the country.

The province is also a ‘paradise’ and home to some of the largest agribusiness firms in the country. To name a few, Del Monte Philippines, Inc. (formerly Philippine Packing Corporation), Lapanday Diversified Products Corp., and Mt. Kitanglad Agri-Development Corporation are engaged in pineapple production. Dolefil (Dole Philippines) and Mt. Kitanglad Agri-Ventures, Inc. are in banana production. Bukidnon Sugar Milling Corporation (BUSCO) and Crystal Sugar Milling are in sugar milling and refining. Food manufacturing giants such as San Miguel Foods Corporation, Monterey Farms Corporation, Swift Foods, Inc. have intensified contract breeding and growing operations in the province. And Valencia Rubbertex, Inc., an 80-20 Japanese-Filipino joint venture produces rubber boots and rubber shoes for Japan. There are also a considerable number of ARB or cooperative owner-operated farms in the area.

At the northeastern part of Bukidnon is the town of Impasug-ong, a second-class municipality¹² and home to about 6,000 households or roughly 33,000 people. Politically subdivided into thirteen barangays¹³, the residents of three barangays— Cawayan, Impalutao and Kibenton, are some of the earliest beneficiaries of CARP in 1988.

One of the landholdings which was redistributed to landless residents and farm workers is a portion of the 1,144 hectare-coffee plantation formerly owned by Millmar Development Corporation. The plantation traverses the barangays of Cawayan, Impalutao, Kibenton and

¹² Municipalities or towns are local government units in the Philippines. They are divided into income classes according to their average annual income during the last three calendar years: 1st class: PhP 35 Million or more (USD 700,000 or more); 2nd class: PhP 27,000,000 or more but less than P35,000,000 (USD 540,000- 699,999); 3rd class: P21,000,000 or more but less than P27,000,000 (USD 420,000- 539,999); 4th class: P13,000,000 or more but less than P21,000,000 (USD 260,000- 419,999); 5th class: P7,000,000 or more but less than P13,000,000 (USD140,000- 259,999); 6th class: below P7,000,000 (below USD 140,000). See the Local Government Code of 1991, www.dilg.gov.ph/pdf/LGC%20BOOK%202.pdf. Alternatively, see http://en.wikipedia.org/wiki/Philippine_municipality.

¹³ The smallest unit of political governance in the Philippines.

some areas of the Higaonon tribe. Millmar Development Corporation used to be owned by Althor Van Damme, a Belgian national who accumulated the landholdings from 1977-1981. According to Ka Ramir Batungmalaque, vice president of the Cawayan-Impalutao Agrarian Reform Beneficiaries Association (CIARBA), Mr. Van Damme purchased the corn lands from Lumads or the *local indigenous peoples* who lived in the areas for PhP500-800¹⁴ (US\$10-16) for untitled lands and PhP1,000 (US\$20) for titled lands. He then converted the land into a coffee plantation.

In 1989, through the Voluntary-Offer-to-Sell mode of CARP, Mr. Van Damme sold 295 hectares of his coffee plantation to the Department of Agrarian Reform; 144 hectares were located in Brgy. Kibenton, and the 151 hectares in Brgy. Cawayan and a portion of Impalutao. The remaining 849 hectares located in Brgy. Impalutao (where the coffee plant/factory is situated) were exempted from agrarian reform.

In order to avail of the fruits of CARP and in compliance with the program, the landless residents and farm workers organized themselves. CIARBA was organized in 1990 and officially registered at the Bureau of Rural Workers in Cagayan de Oro on November 3, 1991. CIARBA has 61 members— 35 percent are women and 65 percent are men. The other two organizations include the CARABAO (Cawayan Agrarian Reform Beneficiaries Association) comprised of mixed settlers of Lumads, former farmworkers of Millmar Development Corporation, and the *Kadumahan* (roughly translates as “relatives”), a Lumad organization of the Higaonon tribe, whose members hold Certificates of Land Title.

The 151 hectares in Brgy. Cawayan went to CIARBA members. The records show that 17 Mother Certificates of Landownership and Acquisition or collective titles were awarded to CIARBA members in 1991. As there were actual cultivators in some of the lands, the mother CLOAs were raffled off, a la lottery draw. But each of the board member of CIARBA had the ‘first choice or prerogative’ to choose the lands they wanted to till. Each landless resident/farmworker-beneficiary received one to three hectares of land. The new farmers-owners converted the land from coffee to corn production.

Non-governmental organizations helped in facilitating the identification of agrarian reform beneficiaries in the area. A partnership among NGOs (in this case, Kaanib Foundation [KFI]), peoples’ organizations, and the DAR was set up under the name Tripartite Partnership for Agrarian Reform and Rural Development (TriPARRD)¹⁵ in the early 90s. An initiative of PhilDHRAA, a network of NGOs involved in agrarian reform and rural development advocacy, the TriPARRD was created to speed up the actual land transfer and delivery of support services to farmer beneficiaries in the areas of Bukidnon, Antique, and Camarines Sur. Brgy. Cawayan and Impalutao were the first batch of TriPARRD beneficiaries and pilot areas in Bukidnon. PhilDHRAA helped organize twelve peoples’ organizations (including CIARBA), which later on formed a provincial federation called PALAMBU¹⁶ or Bukidnon NGO Center, and educated members about CARP— their rights to claim land and support services.

According to the agrarian reform law, land redistribution should be coupled with education and livelihood trainings, among others, to effectively assist the “new landowners” in developing their

¹⁴ US\$ 1= PhP 50 (2006 levels)

¹⁵ TriPARRD is an initiative/strategy of many NGOs engaged in agrarian reform during the early 90s.

¹⁶ PALAMBU stands for *Panaghiusa sa Lalawugang Mag-uuma sa Bukidnon* (United Small Farmers Federation of Bukidnon). PALAMBU is a federation of farmers’ organizations, women, youth, farmworkers, indigenous peoples and cooperatives that advocates for alternative and progressive systems of governance, genuine agrarian reform implementation, preservation and management of resources, and sustainable development through the active involvement of the community.

lands and livelihoods. The DAR via TRIPARRD provided leadership trainings to CIARBA. The leadership training focused on strengthening institutional building. But other than this, no additional support services such as access to capital and finance, which are critical, were provided to CIARBA. Their counterpart CARABAO was more fortunate; its members received the whole package of support services, which included infrastructure (solar dryer, farm-to-market roads), working animals, and a training center, among others. According to Ka Helen Padla, a member of CIARBA, CARABAO was a priority because they are registered as a cooperative.

The farmers-landowners went into individual farming from 1992 to 2000. Because of the difficulty in accessing capital and finance, the members of CIARBA sold their corn harvest to traders or middlemen from Cagayan de Oro, Malaybalay City, Kisolon, and neighboring towns, who in return provided the capital they needed in the form of farm inputs such as seeds, fertilizers and chemicals. At harvest time, the middlemen cum traders deduct the debt of the farmers and whatever is left goes to the farmers as their income. This arrangement barely allows the farmers to survive and ensnares them into a cycle of indebtedness. This explains why many of these agrarian reform beneficiaries failed to pay amortization fees for their lands.

For instance, the land obtained by Ka Ramir is valued at PhP14,000 (US\$ 280) per hectare payable within 30 years. In his case, after each harvest, he was expected to give 1% of his harvest-income as initial payment. The next payment would be pegged at 2% for 10 years or roughly PhP280 (roughly US\$6) per year. After 10 years, this would increase to 11% until the land is fully paid for.

To address the growing problem, CIARBA was advised by the local government and DAR provincial office to merge and form a cooperative with the other two POs. Thus, in 1998, they established the CARABAO Farmers Cooperative (CFC) to access support services. Unfortunately it was too late for them. The DAR Regional told them that there were no more funds available to finance support services.

After awarding the Mother Certificates of Landownership and Acquisition in 1991, government virtually left many farmers to fend for themselves. Since the farmers were financially broke, they were unable to sustain payment of amortization fees. However, for some who were able to pay their Farmer Advance Remittance or amortization due to the Land Bank of the Philippines (LBP), no ledgers were produced by the Bank to prove that the farmers paid their dues. Many members of CIARBA reportedly made numerous requests to the local branches to provide them copies of the ledger. Unfortunately, their requests have not been granted.

In 1998, according to Ka Ramir, there were canvassers from Del Monte who investigated and scanned the area of Brgy. Cawayan. Apparently, Del Monte was scouting for new lands to exploit as part of the expansion of their operations.

Two years later, a provincial representative of the LBP went to Brgy. Cawayan to collect the amortization payments due them. But CIARBA was unable to produce payment. The Bank representative threatened foreclosure for nonpayment. But he also 'opened and promoted' the idea of leaseback arrangements and informed them that this might be a solution to their amortization woes. According to Ka Helen and Ka Ramir, the DAR, the LBP and Del Monte already discussed the possibility of leaseback arrangements in the areas even before the visit of the LBP representative.

In the same year, representatives (canvassers-negotiators) from Del Monte (Eric Martinez, JC Hebron, Victor Dumutan and Bobby Villanoy) convened a public hearing and gave an orientation on the benefits and advantages of leaseback arrangements to the members of CIARBA and other organizations. The following advantages were cited: (1) Del Monte would pay for their amortization through the rent of their lands, in essence, freeing the farmers-owners of their obligation to the government; (2) the farmers-landowners would be the priority new hires as farm workers.

Caught in a situation where their lands were threatened by foreclosure, the ARBs were compelled to enter into what seemed to be a win-win solution. It was a classic carrot-and-stick approach.

The negotiations took more than a year. Members of PALAMBU protested against the leaseback arrangement between their member, CIARBA and Del Monte and deemed it “illegal” on grounds that it runs counter to the farmers’ interests and agrarian reform, in theory and practice. Esther Villarín, a paralegal of PALAMBU, went to Brgy. Cawayan and talked to the barangay captain to convince him not to accept the offer of Del Monte. With much prodding and sense of urgency, peoples’ organizations within PALAMBU informed the members of CIARBA about the downside of such an arrangement. There was of course great debate within CIARBA. Ka Ramir recollected that he was punched in the face for his resistance to the leaseback contract.¹⁷

But according to the barangay captain, the farmers already decided to enter into the leaseback arrangement. They did try a counter-offer, i.e. a contract growing arrangement on their own terms. But, Del Monte refused their offer because it would entail the corporation to provide the equipment, facilities, machinery and inputs (not to mention the assured market) for the farmers, while the farmers would take care of the production, labor and management of the land. Clearly, for Del Monte, the contract growing arrangement offer of CIARBA was disadvantageous to them.

Del Monte offered the following: (1) a 25-year lease; (2) annual land rent of PhP5,150 (US\$ 103) per hectare (half of which will go to their amortization dues and the half to the farmers as rent income); (3) 3-year cash advances for the first 3 years and one-year cash advances for the succeeding years; (4) payment for permanent crops or trees in the lands (ranging from PhP 50-800.00 [US\$ 1-16] depending on the tree). So, a farmer like Ka Ramir with three hectares of land would get PhP15,450 (US\$ 309) a year or roughly PhP429 (roughly US\$ 9) per month. Half of this amount would go to the amortization of his land. According to him, Del Monte derived the land valuation from the LBP.

To resolve the stalemate, a final dialogue was held in Cagayan de Oro at the DAR Regional office. During the dialogue, the DAR officials asked Del Monte the details of the contract— how many fruits will be planted in a hectare and how much per fruit would be given to the farmers as share, among others. But no figures were given. The dialogue did not reach a resolution.

Finally, on May 23, 2001, some of the members of CIARBA entered into leaseback contract with Del Monte. An official contract signing was held in the gym of Impasug-ong. They were made to sign the contract first (before Del Monte’s representatives). Present during the event were representatives of the local government, LBP, and the DAR Provincial office who put a seal of legitimacy and legality to the arrangement. In protest, NGOs were noticeably absent during the

¹⁷ After CIARBA entered into a leaseback arrangement with Del Monte, they remained as members-observers of PALAMBU. However, CIARBA members stopped going to the meetings and trainings for various reasons such as they have virtually lost control over their land resources and have no issues/cases to raise during meetings. However, when their “leaseback woes” started, PALAMBU ‘resumed’ assisting CIARBA in their cases.

supposed contract signing. The members of CIARBA and even other POs who entered into leaseback contracts with Del Monte thought that their financial woes were finally over. But much later on, they would realize that what first seemed to be win-win solution turned out to be a losing proposition for them.

Leaseback Woes: Impact on CARP Beneficiaries and Program

Five years into the contract, Ka Helen and Ka Ramir have yet to receive a copy of the signed contract. They verbally agreed and signed to the terms set by Del Monte but the details of the contract remain murky. They have reportedly requested Del Monte repeatedly for a copy of the contract but the usual response was that that Marco Lorenzo, Senior Manager of Del Monte Philippines, had not yet signed the contract. This is anomalous because the entire 17 Mother Certificates of Landownership and Acquisition are already subject to leaseback contracts and the agribusiness operations are already in full swing.

Apart from the inexistent contract, one of the problems of the CIARBA members is whether Del Monte had indeed paid their amortization. Based on their documents, the receipt given by Del Monte specifies the amount of land rent and advances they receive and for which years. It likewise specifies the amount of amortization due to the LBP. Del Monte's receipts serve as proof of the land rent, cash advances, and amortization fees they paid to CIARBA members and LBP. However, according to Ka Helen and Ka Ramir, the LBP provincial office have yet to provide them with any ledgers that would verify that such payments were really made by Del Monte. They already sent a resolution to DAR, LBP, and Del Monte seeking how much has been paid but the agencies and the corporation have yet to respond.

It took less than a year for the farmers to realize the inherent flaws of the leaseback contract. In 2002, Hernando Talugco, the captain of Brgy. Cawayan and a member of CIARBA, talked to Esther and asked her if they could annul the contract because they do not like the way that the leaseback arrangement was going. The problem according to Esther is that they have already signed the contract with Del Monte and it might be difficult to overturn the contract right away.

Del Monte also reneged on its promise of hiring them as farmworkers. Among the approved beneficiaries within CIARBA, only one resident became a permanent worker. The others recommended by the landowner-beneficiary are either seasonal or were not accepted because they did not reach certain qualifications. Instead, Del Monte brought regular workers who hailed from Manolo Fortich and other areas. There is also an increasing trend of contractualization even among the ranks of regular workers. Given the current situation, this makes it more impossible for CIARBA members to get jobs in their own lands.

Barangay Captain Hernando is not the only one frustrated with the leaseback arrangements. As Ka Helen quips, *"Kung pera lang ay kikita naman kami pero dahil maganda offer ng Land Bank at Del Monte, um-okay kami. Pero lahat ng offers sa umpisa, di natupad"* (We could have earned money elsewhere but the Land Bank and Del Monte's offer looked good, so we agreed). Ka Helen is also frustrated because none of the benefits that Del Monte assured were realized.

Ka Ramir became emotional when he thought of their land struggle during CARP: *"Ang lupa na binigay sa amin, matagal naming pinaghirapan. Sa amin ito, para sa aming anak pero bumalik lang sa korporasyon."* (We fought hard for the land given to us. This is ours, for our children, but it only went back to the corporation.) Grief, disappointment, and unease are but some of the words that describe how members of CIARBA felt about leasing their lands to a corporation. But

in Ka Ramir's case, the land rent that he receives from Del Monte is sufficient to pay for his needs because he does not have any family to support. Also, because he had some savings, he was able to buy a piece of land, which he is now tilling. But his comrades are not as fortunate. Many CIARBA members do not earn enough or are unable to find other sources of income to support their families¹⁸. Much more, they do not own land that they could till.

In theory, in 25 years time, the children of CIARBA members will receive the land without any debt. But today, given the same choice, they would not enter into a leaseback agreement with any company, even if the offer is as tempting. As Ka Ramir puts it, "*Mahirap nang maghanap ng lupa. Okay lang kung mayaman ka. Mahalaga pa rin ang lupa.*" (It's difficult to find land nowadays. It's easy if you're rich. Land is still important.) Ka Helen's heart, on the other hand, is filled with unease and worry. Fear for the future of her eight children. She does not have any documents or contract that would support her claim to her land. "*Paano na si Gelo. 25 taon ang leaseback, di natin masasabi ang buhay*" (How about Gelo [her youngest son]. The leaseback contract is for 25 years, and we can't tell what's going to happen).

If there is anything positive that came out of this experience, it is that it imparted lessons to other POs. The farmers of Brgy. Kibenton in 2003, for instance, had a better contract because they compelled Del Monte to make Marco Lorenzo sign a contract before they implemented an agreement. Others chose DOLE, because for them this corporation provided a better offer: (1) 25 years contract with an annual land rent of PhP12,000 per hectare (paid in a staggered mode); (2) 2-year cash advances but the landowner-beneficiary-leaser would need to pay his/her amortization directly to the LBP. While the farmers were able to exercise their leverage, they still lose their control and access to the land.

Well before Del Monte entered the scene, in 1999, the approved beneficiaries of CIARBA were in negotiations for a contract growing arrangement with a Japanese company, HISUCOR for planting sugarcane. The terms of the agreement were an annual land rent of PhP15,000 per hectare (US\$ 300), with a 15 year advance. These terms were drawn up by the CIARBA members. Unfortunately, the Japanese investor did not proceed with the plan due to security considerations.

The CIARBA members' experience with the leaseback contract with Del Monte compelled them to do some rethinking. For one, Ka Helen and Ka Ramir want to reclaim their land but do not know how to go about it. Among some of the ideas they can toy with to start the process of reclaiming their land are the following: (1) Ask DAR to facilitate the legal process of acquiring the contract from Del Monte, and to consider the 'inexistent' contract as grounds for annulment; (2) Request the local government to investigate complaints that Del Monte reneged on some of its promises, such as to prioritize CIARBA members in hiring workers and consider this as a ground for rescinding the contract; (3) Solicit DAR National to look at the anomalous implementation of leaseback arrangements, especially in Bukidnon.

In addition to the case study presented above, other studies also showed the detrimental impact of leaseback arrangements on agrarian reform beneficiaries and confirmed that such arrangements undermine the essence of agrarian reform.

¹⁸ The daily cost of living for a family of five is about PhP 400-500 (US\$ 8-10). The monthly land rent that Ka Helen's family gets, for 3 hectares of land, is about US\$ 12-13 (see above section: annual land rent per hectare is US\$ 103, half of which goes to amortization dues and half goes to the landowner-lessee). This monthly land rent is not enough compared to their monthly expenses of US\$ 240-300.

The studies conducted by Ofreneo and AFRIM (both in 2000) described the onerous terms of leaseback agreements in Agusan del Sur. For instance, the beneficiaries were only paid PhP635 (about US\$ 13) per hectare when the lease rental should have been pegged at more or less PhP6,000 (US\$ 120) per hectare. Moreover, in exchange for a higher rental of PhP2,500 [US\$50] (compared to the PhP635 contained in the first lease agreement), the beneficiaries must surrender their land for another 25 years (the first lease expires in 2007).

Ofreneo's study, which also tackled the DOLE Philippines (Dolefil) and the DARBCI (Dolefil Agrarian Reform Beneficiaries Cooperative Inc.) leaseback agreement in South Cotabato, illustrated how the leaseback agreement has been unfavorable for the agrarian reform beneficiaries. Aside from the low lease rentals (as compared to lease rentals in other plantations in Bukidnon), only half of the original beneficiaries (4,160 out of 9,298 workers) are now employed under the new lease contract. Rising productivity, contractualization, etc. resulted to the loss of jobs by half of the original beneficiaries. They are now dependent on the rental income as their main source of income and are unable to get jobs somewhere else. The negotiations for a new leaseback agreement had also divided the workers into two factions engaged in a court struggle as to which should be considered legitimate and thus representative of the interests of the cooperative membership.

The AFRIM study on the Stanfilco Banana Expansion in Tawantawan, Baguio District, Davao City also confirmed that the ARBs are undoubtedly the losers under the terms of the leaseback arrangement with Stanfilco. The lease rate of PhP12,000 (US\$ 240) per hectare is unfair when juxtaposed with the estimated net income of Stanfilco of PhP360,360.00 (US\$ 7,207.20) per hectare of banana. In the computation done by AFRIM, the PhP12,000 is only 3% of Stanfilco's net income per hectare. Based on the DAR's Administrative Order, the lease rate per hectare in Tawantawan should be pegged at 6% of the net income by the lessee or PhP22,046 (US\$ 440) per hectare.

Stanfilco-Tawantawan Lease Contract Details

- Rental rate of PhP12,000 per hectare per year
- Contract term is 15 years, renewable at the option of lessee (Stanfilco)
- Rental rate of PhP12,000 is fixed until the 10th year, rate for the 11th to 15th year for renegotiation
- One-time signing bonus of P2,000 (US\$ 40) per hectare
- Rentals for the first two (2) years to be paid in advance within fifteen (15) days from signing of the contract
- Lessee (Stanfilco) may exercise at anytime its option to terminate the lease contract
- Lessee (Stanfilco) may assign or transfer rights, in whole or in part, under this lease to any person
- Lessee (Stanfilco) may sublease, in whole or in part, its rights on the leased property

Source: AFRIM study, 2000

Aside from the unfair lease rates, the other provisions of the lease contract practically transfer all the decision-making powers over the land to Stanfilco and to a degree the advantages or financial gains that might come from it. With the option to sub-lease provision for example, Stanfilco can easily sublease the lands to a third party at a higher per hectare rate compared to what they are paying to the ARBs. The option to terminate the contract given to Stanfilco under

the lease contract is also disadvantageous to the ARBs. In the event that Stanfilco suddenly decides to terminate the lease, the ARBs are obliged to return the unused portion of the rent payments advanced them.

Revisiting Leaseback Agreements

Clearly, government needs to determine the actual number of lands covered by leaseback, joint venture agreements, and other such schemes. Not only for the purpose of monitoring such schemes but to also assure the public that the benefits of agrarian reform accrue to the identified beneficiaries. Since the initial studies show that these leaseback agreements and other AVAs are detrimental to interests of the agrarian reform beneficiaries, the government should undertake serious rethinking and reconsider its track of pursuing this particular strategy.

This is the least that the government can do given its inability to provide the full complement of support services needed by agrarian reform beneficiaries to make their awarded lands productive. Agrarian reform goes far beyond merely changing the status of a landless farmer. It entails empowering farmers so that they may improve their economic viability, and uplift their dignity and lives. It necessitates giving the beneficiaries effective control over the land resource. Leaseback arrangements, thus, should not be an option in the schemes for agrarian reform implementation.

The lease and other AVA contracts should be examined thoroughly by government to ensure that beneficiaries of the agrarian reform will not be disadvantaged by the terms of the agreement. More importantly, it should ensure that beneficiaries are educated about breach of contracts and how to escape unscathed from unfair contracts.

A review of JEEP should also be pursued since it sets out the rules and regulations for the implementation of leaseback and AVAs. Punitive measures and sanctions must be put in place to ensure that violations of the rights of individual by corporate entities under such agreements are addressed.

Too, a study on whether such leaseback arrangements and other AVAs have encouraged reconsolidation of lands should be pursued both by government and agrarian reform advocates. Reconsolidation of landholdings, after all, would negate the primary aim of the agrarian reform law to distribute wealth through land distribution.

Leaseback cases such as that of CIARBA should be further examined and revisited. The various types and models, and the reach and depth of these arrangements should be investigated. It might turn out that these arrangements are fast becoming a major trend, which would only mean further reversal of the gains of CARP on the ground. And if indeed such cases are prevalent, then, it can only be concluded that the intended beneficiaries are not fully enjoying the fruits of the agrarian reform. Hence, government would do well to draw up measures to address the issue.

Civil society advocates of agrarian reform and peasant organizations should monitor this particular trend as it negates the very essence of agrarian reform. It defeats the purpose of their main advocacy of land redistribution; only to have it reversed under an AVA scheme. This is especially crucial given the aggressive promotion of the current government for agribusiness as a development strategy for the agriculture sector.¹⁹ Only by being vigilant, by persistently staking

¹⁹ Under the 2004-2010 Medium-Term Philippine Development Plan (MTPDP), the Gloria Macapagal-Arroyo government will acquire “new lands for agribusiness” to generate 2 million jobs in the countryside or one job per

their claims and demanding accountability from government will the gains of agrarian reform be preserved and protected.

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hectare. This entails expanding the effective production areas for agriculture and fisheries, and expanding as well the product mix grown within the agribusiness lands. However, it is doubtful whether there are new lands to 'exploit' as most of the agricultural lands are engaged in one form of crop production or another. Most likely, agricultural lands in rice, corn, and other staple crop production will be converted to agribusiness production.