



WINDY  
SIDELOPP

# A Case for Completing Agrarian Reform



Farm Bulletin Editor-in-Chief Allen Mariano

The deadline for the completion of the agrarian reform program is approaching. But it appears that the Department of Agrarian Reform (DAR) and the Department of Environment and Natural Resources (DENR) are hard pressed to meet the deadline.

Started in June 1988, agrarian reform was supposed to be completed a decade later. Instead, the program was extended for another ten years to allow the DAR and the DENR to complete program implementation, which was hampered by strong landowner opposition. Today, the people who opposed the program from the very start are strongly clamoring for the closure or abolition of the program. They claim that agrarian reform is detrimental to the economy.

But a study published in 2002, assessed that agrarian reform has a positive impact on the economy, in particular on poverty.

The research sought to determine whether the agrarian reform beneficiaries experienced higher incomes and reduced poverty incidence. It gathered socio-economic information about 1,800 households; from two surveys that were done a decade apart (the first in 1990 and the follow-up survey in 2000). The results show that agrarian reform led to higher real per capita incomes and reduced poverty incidence between 1990 and 2000.

In particular, the study showed that the poverty incidence among agrarian reform beneficiaries (ARB) declined from 47.6 percent in 1990 to 45.2 percent in 2000. The decline is but a few percentage points but it still is unmistakably a decline. The results also showed that poverty incidence among ARB households is lower than among non-ARB households and the difference in the poverty incidence between the two groups widened in 2000. Moreover, the ARBs have reportedly better access to safe water and sanitation facilities and their household members tend to have higher educational attainment than members of non-ARB households.

Clearly, these findings should compel government to hasten the completion of agrarian reform. And as the study recommends, government should ensure that complementary inputs are provided to maximize the benefits from agrarian reform. The provision of irrigation, credit and other government services tend to promote higher incomes.

The study highlighted the vulnerability of farmers to danger, particularly weather-related ones. This means that government should also extend safety nets, particularly for the very poor. These safety nets would ensure that those hit by shocks need not resort to coping mechanisms that would have long term negative impact on their productive capacities. 🌿

## Bulletin Farm

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cover photograph by J. Dalusag

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# Another Look at RVAT



Rovik S. Obanil is a policy advocacy officer under CSI's Small Farms and Agri. Trade Center

BY ROVIK SANTIAGO OBANIL

**I**n one of her dramatic pronouncements, President Gloria Macapagal Arroyo announced in 2004 that the country was in the midst of a fiscal crisis. Failure to generate the revenue needed, to finance government's debt commitments and development programs, was threatening to lead to a further downgrading of the country's credit rating.

This, in turn could result in international and domestic investors refusing to provide new money for future spending. Despite assurances from government that it did not intend to default on its obligations, apprehensions that the

country was on the verge of a debt default simply refused to go away.

The Philippines is Asia's most active borrower (issuer of sovereign debt) after Japan and has run budget deficits in 11 of the last 15 years, including 2005.

This has been largely the result of poor revenue collection and continuing corruption. Purportedly to remedy the situation, the Arroyo administration proposed a package of fiscal reforms aimed at wiping out government's chronic budget deficits, which stood at PhP180 billion last year.

At the heart of this reform program is an increase in the Value Added Tax (VAT) rate and the expansion of its tax base with the lifting of exemptions, notably on petroleum products and power generation. The VAT reform law was expected to be the biggest revenue contributor of all the measures intended to solve the country's fiscal problems. The government claimed the expanded VAT could bring in an extra PhP28 billion in 2005 to narrow the budget deficit. It said



Jimmy Domingo



additional revenues from the expanded VAT would rise to about PhP145 billion this year, after the President exercises her power to raise the rate to 12 percent from the previous 10 percent. With it, government hopes to meet its revenue and budget deficit targets.

In defending the measure, the Arroyo administration argued that implementing the VAT reform law was necessary if the government was to balance its budget and avoid going the way of an Argentine-style debt default. Fears of an “Argentina scenario” and the President’s surprise declaration in 2004 that the country was in a state of “fiscal crisis” have provided the impetus for the government’s aggressive push to get its economic agenda passed in Congress.

Representative Joey Salceda, an economic adviser to the President, for ex-

ample warned that delaying the implementation of the tax measure would have a “disruptive effect on financial markets” and would make the Philippines lose a lot of momentum just when the country was back on the radar screen of investors.”

The original VAT had replaced what one economist had described as “an unfairly onerous, convoluted and highly distortive turn-over tax system that lent itself more to corruption and tax evasion.” The old tax charged taxes as a certain percentage of the price at every point of sale whether it was a final product, an intermediate input or even a raw material. Thus the more stages a product had gone through, the more “cascading” taxes were paid.

While aimed at improving and simplifying tax collection, the original VAT

proved to be so full of holes that it resulted in a virtual revenue hemorrhage. In 2003, the National Tax Research Center (NTRC) released the results of a five-year study that estimated a loss of PhP127 billion a year from uncollected income taxes and VAT annually from 1998-2002., or a total of PhP635 billion over the five-year period.

Prior to that, a Department of Finance (DoF) study had estimated an even bigger yearly loss of PhP243 billion if one includes uncollected excise, documentary stamp, interest withholding, fringe benefits, gross receipts and insurance taxes. The NTRC study estimated P85.4 billion or two-thirds of the yearly leakages to have come from income tax non-repayment, while PhP41.6 billion or one-third was lost from uncollected VAT.

Clearly, putting the country's fiscal house in order would be impossible without changes in the old VAT law. Pres. Arroyo had made the VAT reform the centerpiece of her economic reform agenda. The reform package, however, faced rough sailing in Congress after the unexpected loss of her administration's majority in the Senate (due to the mass desertions following the "Hello Garci" scandal and allegations of cheating in the 2004 election) and the distractions resulting from continuing opposition attempts to unseat her. Thus, in many ways, the reform package could not have come at a worse time. Increasing economic jitters brought about by fears of a looming oil crisis coupled with political unrest, had made even the mere suggestion of adding to the tax burden seem particularly callous.

**Enter the RVAT**

While the government denies it, pressure from international creditors obviously played a big role in pushing fiscal reforms. Multilateral donors led by the World Bank (WB) promised to raise development assistance to the Philippines if the government speeds up its fis-

cal reform program. According to Joachim Von Amsberg, World Bank country director for the Philippines, several ODA partners indicated their willingness to go beyond current programs and provide "substantially increased financial commitments if and when the country established a track record of significant and sustained fiscal actions."

International institutions like the World Bank diligently monitored the progress of the reform agenda, using the passage of the VAT reform measure as a test not only of the government's desire but more importantly, its capability to implement "unpopular" fiscal reforms. Foreign credit agencies tend to view the Philippines with skepticism due to its notorious lack of consistency in policymaking and the VAT reform bill provided the perfect opportunity to see whether government could stay on track.

The controversial Reformed Value Added Tax Law, or Republic Act 9337, was finally signed into law in May 2005 after a bruising propaganda war between Pres. Arroyo and opposition legislators and militant groups who warned of its impact on the poor. The law is a consolidation of three legisla-

tive bills namely, House Bill Nos. 3555 and 3705, and Senate Bill No. 1950.

House Bill No. 3555 was introduced on first reading on 07 January 2005, in substitution of House Bill No. 1468, which Representative (Rep.) Eric D. Singson introduced on 08 August 2004. The President certified the bill for immediate enactment. On 27 January 2005, the House of Representatives approved the bill on second and third reading. House Bill No. 3705 on the other hand, substituted House Bill No. 3105 introduced by Rep. Salacnib F. Bateria, and House Bill No. 3381 introduced by Rep. Jacinto V. Paras. The House Committee on Ways and Means approved the bill on 02 February 2005. The President also certified it as urgent on 08 February 2005. The House of Representatives approved the bill after twenty days.

Meanwhile, the Senate Committee on Ways and Means approved Senate Bill No. 1950 on 07 March 2005, "in substitution of Senate Bill Nos. 1337, 1838 and 1873." Senator Ralph G. Recto sponsored Senate Bill No. 1337, while Senate Bill Nos. 1838 and 1873 were both sponsored by Sens. Franklin M. Drilon, Juan M. F. Flavio and Francis N. Pangilinan. The President certified the bill on 11 March 2005, and was approved by the Senate on second and third reading on 13 April 2005.

In order to harmonize the disagreeing provisions, the Senate on 13 April 2005, agreed to the request of the House of Representatives for a committee conference on the proposed bills. Apart from the general opposition to additional taxes, among the contentious issues were whether to raise the VAT rate from the previous 10 percent to 12 percent or to simply retain the old rate and expand the base by lifting previous exemptions and whether to impose a no-pass on provision for IPPs only or to include the oil companies as well.

Eventually, the Conference Committee, "after having met and discussed in full, free and conference," recommended the approval of the Committee Report. The Senate approved the report on 10 May 2005, followed by the House of Representatives the next day, 11 May 2005.

On 24 May 2005, the controversial Reformed Value Added Tax Law, or RA



Jimmy Donahue

Former Finance Secretary Cesar Purisima was among those who claimed that delaying the implementation of the new tax measure would cost the government huge revenue losses.



Alex Baluyut

9337, was finally signed into law. It was supposed to take effect on 01 July 2005. Before it could take effect, however, the Supreme Court issued a temporary restraining order, preventing the government from enforcing and implementing the law. The TRO came after several petitions were filed questioning the constitutionality of RA 9337. One of the points raised was the so-called “stand-by authority” granted the president to raise the VAT rate without going through Congress.

As expected the issuance of the SC TRO once more raised concerns among the country’s creditors and shook investor confidence. Administration officials once more warned of serious consequences with former Finance Secretary Cesar Purisima claiming the TRO would, “cost the government PhP4 to PhP5 billion monthly in lost revenues...result(ing) in a serious setback to our fiscal consolidation program.” Corazon Guidote, the presidential consultant on investor relations,

meanwhile warned that “the longer the VAT was delayed, the bigger the impact on investor confidence in the country.”

In its 01 September 2005 decision, however, the high court upheld the constitutionality of the RVAT. According to the SC decision, “The granting of the stand-by authority to the president according to the Supreme Court does not constitute abdication of congressional power. The so-called *stand-by authority* in favor of the President, whereby the rate of 10% VAT wanted by the Senate is retained until such time that certain conditions arise when the 12% VAT wanted by the House shall be imposed, appears to be a compromise to try to bridge the difference in the rate of VAT proposed by the two houses of Congress. Nevertheless, such compromise is still totally within the subject of what rate of VAT should be imposed on taxpayers.”

The Court also struck down allegations that the new provisions arising from the Bicameral Conference Committee proceedings constituted grave abuse

of discretion amounting to “lack or excess of jurisdiction.” In this case the Court ruled that, “all the changes or modifications made by the Bicameral Conference Committee were germane to subjects of the provisions referred to it for reconciliation.” Such being the case, the Court did not find any grave abuse of discretion amounting to lack or excess of jurisdiction committed by the Bicameral Conference Committee. The Court decision stated that it was within the power of a conference committee to include in its report an entirely new provision that is not found either in the House bill or in the Senate bill.

VAT opponents also charged that the newly passed law violated the constitutional mandate that all revenue measures must originate from the House of Representatives. The SC reiterated that it is not the law but the revenue bill which is required by the Constitution to “originate exclusively” in the House of Representatives. To insist that a revenue statute, and not only the bill which initi-

ated the legislative process culminating in the enactment of the law, must substantially be the same as the House bill would be to deny the Senate's power not only to "concur with amendments" but also to "propose amendments." It would, in other words violate the co-equality of legislative power of the two houses of Congress and in fact make the House superior to the Senate.

The Supreme Court decision paved the way for RVAT's implementation in the last quarter of 2005. RA 9337 amends the National Internal Revenue Code (NIRC). It expands the sales tax base to include the electricity, fuel, air and sea transport, and other previously VAT-exempt industries. The VAT rate was kept at 10 percent. It did, however, give President Gloria Macapagal-Arroyo unprecedented powers to bypass Congress and raise the rate to 12 percent once either of the following conditions are met:

"That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

- (i) Value-added tax collection as a percentage of Gross Domestic Product (GDP) of the previous year exceeds two and four-fifth percent (2 4/5%); or
- (ii) National government deficit as a percentage of GDP of the previous year exceeds one and one-half percent (1 1/2%)."

Sure enough, after a few months of implementation, the President based on the finance department recommendation raised the VAT to 12 percent this year.

**RVAT and Philippine Agriculture**

Farmers and other agricultural producers watched the unfolding drama of the RVAT with great trepidation. To ordinary small farmers already saddled with the twin burden of decreasing government support and the flood of subsidi-



dized imports, the possible impact of the RVAT on the agriculture sector was but another cause for apprehension. Fortunately, RA 9337 largely exempts the agriculture sector.

Under the Amendments to Section 109, listing exempt transactions, RA 9337 provides for the exemption of:

"(A) sale of agricultural and marine products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefore.

Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market, such as freezing, drying, salting, broiling, roasting,

smoking, or stripping. Polished and/or husked rice, corn grits, raw cane sugar and molasses, ordinary salt, and copra shall be considered in their original state."

In addition, the sale or importation of fertilizers; seeds, seedlings and fingerlings; fish, prawn, livestock and poultry feeds, including ingredients, whether imported or produced domestically, used in the manufacture of finished feeds (except specialty feeds for race horse, fighting cocks, aquarium fish, zoo animals and other animals generally considered as pets) are also exempt.

Sales by duly registered agricultural cooperatives to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation or direct farm in-





Alex Banaag

the added cost rather than increase their prices.

Increased power rates resulting from the lifting of VAT exemptions on the power sector may also affect sectors like the poultry industry. Commercial poultry production requires extensive use of lighting during the development of broilers from day old chicks up to the time they are sold in the market. It still remains to be seen whether such an increase will be significant. It should be noted, however, that this is also largely dependent on whether the increase in electricity rates proves significant and whether the producers can bear the burden of the increase or they feel constrained to pass it on to the market in the form of commodity price increases.

Corn, which is mainly grown in Mindanao and shipped to Luzon for processing as livestock and poultry feeds is also likely to be affected since apart from the increased fuels cost, the RVAT has also lifted the previous exemptions on shipping.

Also while VAT does not tax primary agricultural production, higher stages of production are *not exempt*. VAT in other words discourages value-adding. The higher in the value chain you go,

the more likely it will be that VAT will catch up with you. By taxing higher value added production, the VAT actually discourages migration from primary level production to higher level agro-processing. This contradicts governments own program of encouraging local producers to go into higher value-added production ventures.

Of course, on top of all this is the expected increase in commodity prices brought on by the increased VAT. In 1996, after the implementation of the expanded value added tax or EVAT, independent research institutions like the Philippine Institute for Development Studies (PIDS) estimated a 7.9% increase in prices. Increased commodity prices invariably affect the poorest sections of society most. In the rural areas,


where the bulk of the country's population struggle daily to eke out a living, the rise in prices will have an immediate impact. It should be noted that farmers are also consumers and would be affected by the expected rise in ordinary commodities in the same way that urban dwellers will. Basic items will ultimately reflect the rise caused by the VAT increase.

**Conclusion**

The successful passage of the VAT reform law was a clear victory for the Arroyo administration. It showed that it could push through controversial legislation even in the midst of political turmoil. Whether this victory will translate to the general welfare remains to be seen.

The passage of RA 9337 sent a message to international community that this government, for good or ill, is committed to raising the revenue necessary to fund its development goals—even if it means taxing the poor. The challenge is ensuring that the promised revenue windfall from its implementation will be invested into worthwhile programs benefiting the people, especially the poor. In the countryside where the majority of the country's poor are, this means pouring funds into agricultural development.

Perhaps, with the added funds, government will have fewer excuses for its measly investments in agricultural support services such as farm-to-market roads, irrigation and post-harvest storage. Perhaps now, we can start addressing the problem of inadequate credit facilities. More importantly, perhaps, with the billions RVAT is suppose to rake in for the government, it can start providing the full funding that the Agriculture and Fisheries Modernization Act (AFMA), government claims notwithstanding, never had.

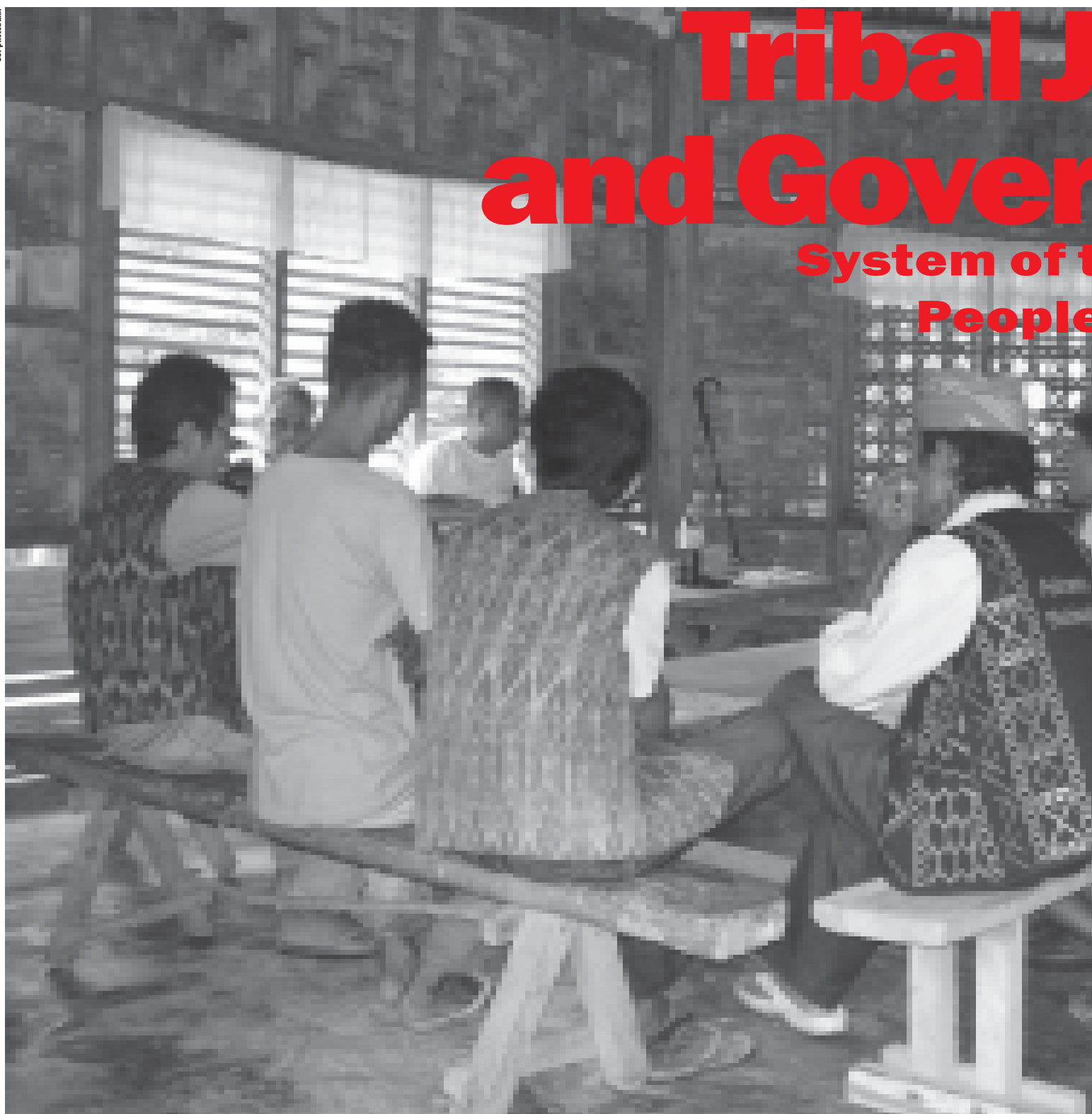
With the exemption of primary agriculture products as well as agricultural inputs such as fertilizers, it is tempting to dismiss the effect of RA 9337 on the farming sector. The true impact of RVAT on specific agri products will eventually show itself over time. This early, however, it appears that VAT will have more than the government's estimated "minimal impact." 

puts, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production of and/or processing of their produce.

The lifting of VAT exemptions on petroleum products will have an impact on those farm commodities which make extensive use of transportation from the farm to the market. Vegetables from Benguet and Mountain Province for example, typically travel hundreds of kilometers to get to their final destinations in the markets of Manila. The rise in the cost of fuel will inevitably result in increased transport costs. With increased competition from imported and smuggled vegetables, the producers are likely to experience a cut in prices since traders are likely to make them shoulder

# Tribal Justice and Governance

## System of the People



**T**he Indigenous Peoples (IPs) of Mindanao comprise eighteen of the 110 tribal groups in the country. According to the National Commission on Indigenous Peoples (NCIP), 11.8 million or 17 percent of the national population belong to the indigenous population. Of the 11.8 million, 7.9 million are located in Mindanao.

# Justice Finance the Indigenous Peoples of Mindanao

BY GEIAH G. HOMERES



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The IPs are among those severely affected by the continuing conflict in Mindanao. They have collectively suffered prolonged marginalization from the period of Spanish and American colonization up to the present. Ironically, it was the Philippine government that

## FEATURES

institutionalized their marginalization by failing to revoke policies and laws implemented by the Spaniards and the Americans, which dispossed them of their ancestral domain. Worse, the government passed new policies that add to their continuing displacement. These include state-sponsored development projects (mining, hydro and geothermal) that encroach on their ancestral domain and threaten their way of life.

As a result, the IPs were driven to the upland areas where they continue to practice their customs and traditions, and self-governance. Displacement from their hunting grounds and their farms has pushed them on the brink of starvation.

The government's military campaign against Muslim separatist movements like the Moro National Liberation Front (MNLF) (in the 70's until its autonomy), its splinter movement, the Moro Islamic Liberation Front (MILF) and the Abu Sayyaf Group (ASG) had also caused suffering among the indigenous communities where these campaigns were waged.

Land remains at the root of the conflict in Mindanao. The IPs practically lost their lands to the Spanish and American colonizers. Government's resettlement program, which brought people from the Northern regions to Mindanao, further exacerbated the situation of the IPs and even set off the Moro's campaign for independence.

### Land for Peace

Realizing that resolving the conflict in Mindanao can only proceed substantially if the the land issue is first resolved, the Philippine Peasant Institute (PPI) together with the Mindanaw Rural Congress (MRC) in 2000, held the Tri-People Conference on Land for Peace. This conference brought together 330 Lumad, Moro and Christian settler leaders in Davao City from 7 to 11 February 2000 to discuss how to hasten the process of having their ancestral lands recognized, titled and awarded to them, through the various government agencies and legislation that had been put in place ostensibly to address these very problems.<sup>1</sup>

One of the resolutions of the Tri-People conference was the formation of

a Lumad and Moro Panel on Land for Peace that would take up the problems faced by the Moros and the Lumads with the government. The first step towards this end is the consolidation and documentation of the IPs system of tribal justice and governance.

The Lumads view the documentation of their system of justice and governance as a tool for their culture's regeneration and preservation. As they are wont to say, their lives are directly connected to their culture; without it, they would perish as a people.

### Tribal Justice and Governance Documentation

The system of justice and governance of a tribal group is what defines it from other groups or cultures. This system delineates the group's territory and sovereignty and characterizes its people—their culture and way of life. Unfortunately, these are largely undocumented. Hence, documenting the tribal justice and governance systems is the first step towards strengthening a tribe's claim to their ancestral domain.

In line with this, Centro Saka Inc. (CSI), a non-government organization, conducted a series of consultations on tribal justice and governance in Mindanao. The documentation of the tribal justice and governance systems are aimed at:

1. Retracing or reconstructing the territory, citizens, and sovereignty of 13 tribal groups in Mindanao;
2. Strengthening the indigenous knowledge, system and practices of these tribal groups; and,
3. Helping in the codification of the laws of 13 tribes in Mindanao

The documentation will have a Visayan language version and an English language version. Centro Saka also aims to produce an audio-visual documentation.

The 13 tribal groups that would be documented are the Ubo Manobo, Ata Manobo, Matigsalog, Mandaya, Mansaka and Matiglangilang/Tigowahanon in the Greater Davao Area (GDA). In the Greater Cotabato Area (CDA), the documentary will cover the

## FEATURES

Teduray-Lambangians, Manobo Dulangans, Arumanen Manobos, T'bolis, and the B'laans. In the Zamboanga Peninsula, the documentation will cover the Subanen and in the CARAGA region, the Higaonon.

Focus Group Discussions (FGDs) and Key Informant Interviews (KIIs) were used to facilitate data gathering for new and additional information that would form part of the documentation.

Of the thirteen tribes, seven have finished conducting consultations and discussions. The other five tribes are undertaking the same processes, while the Teduray-Lambangians have issued a primer about their system of justice and governance.

### Indigenous Knowledge, System and Practices

The documentation focuses on concepts and topics that distinctly make up indigenous knowledge, system and practices. These are the following: tribe and territory, sovereignty, indigenous political structure or system of governance, economic system, customary laws, medicinal practices, educational system, environment, courtship marriage and family, faith and belief system, their present struggle for the recognition of their ancestral domain, the issues and problems besetting IPs in the country, specifically in Mindanao, and their relations with Local Government Units (LGUs).

### Preliminary Review of Selected Tribes

The initial review covered the Ubo Manobos from Davao and Cotabato and the Matigsalogs from Maguindanao and Sultan Kudarat.

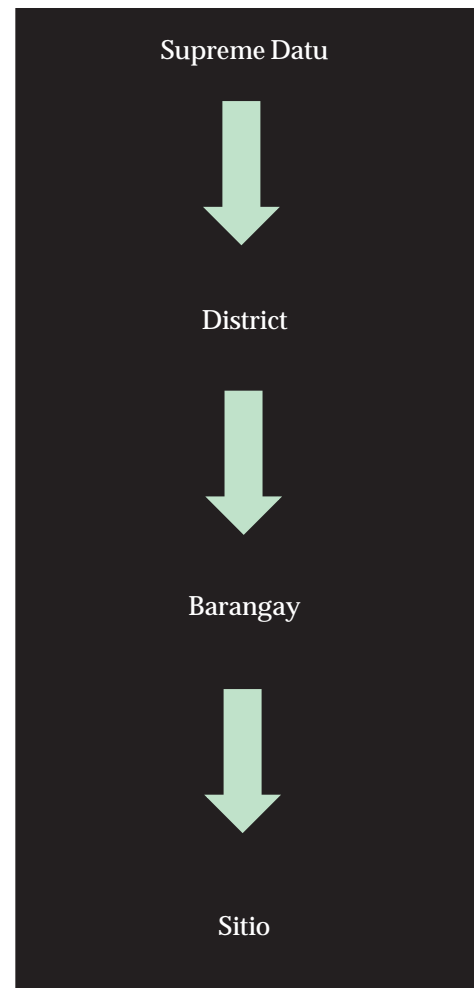
### Ubo Manobo Marahan, Marilog District

The Ubo Manobo tribe occupies two provinces in Mindanao: Davao and Cotabato. In Davao, its territory is bounded by the Talomo river, Tomogan river, Masawang river, Suwawan river and the Davao river. In Cotabato, it occupies the areas of Magpit, Aracan, a portion of Kidapawan, Antipas and Roxas. Its river boundaries are: the Ago river, Matigo river, Kulama river, Tinanan river, Kabakan river, Kulapo river, Siwaw river, and the Matigo river.

The Ubo Manobo's political structure is headed by the Supreme Datu. He exerts influence over the other Datus of each Barangay and travels to other tribes to settle disputes. The local Datu on the other hand is the one who steers the development of the tribe, and whose decisions are obeyed by the people. Obedience to the Datu is also based on the belief that bad luck comes to the person who disobeys the Datu's commands.

The Datu assigns specific responsibilities to each of his sons. When he dies, his sons resolve among themselves who would best be able to fulfill the responsibilities of the Datu. To be chosen as Datu, however, he has to prove himself worthy of the position by being able to settle small and big disputes, even if these are not within his territory. Except for women and unmarried persons, members of the tribe have a say in the choice of the Datu.

Completing the political structure of the Ubo Manobo are the Bagani (in charge of security), Pamuwa (in charge of the economy, e.g. planting, livestock), and the Toosay (in charge of dispute settlement). These functions are assigned to different people, but the Datu is expected to perform these functions as well.



Disputes among the Ubo Manobo are settled by the Datu, no matter how grave or minor these are. The Datu orders the offender to compensate the aggrieved party in cash and in kind for the transgression committed against the other. When a particular dispute is settled, a ceremony is performed to signal the end of the dispute.

However, if the offender commits the same transgression repeatedly, he is eventually penalized with the death penalty. Yet even if the offender has already been sentenced to death, the sen-



Mapping of Tribal Groups in the Mindanao Region

Region 9	Region 10	Region 11	Region 12	CAR/Region 13	ARMM
Badjao Sama Samal Kalibugan Yakan	Bukidnon Higaonon	Bagobo B'laan Kalagan Mandaya Manguangan Tagakaolo T'boli Manobo Blit Bagobo-Tagabawa Bagobo-Guingan/Cлата Manobo/Ubo Ata/Matigsalog	Bagobo B'laan Ilanen Higaonon	Applai Bago Balangao Bontok Bugkalot Gaddang Ibaloi Ibanag Ifugao Ikalahan Itawes Ivatan Higaonon Kalinga Kankaney Karao Malaueg Mandaya Aeta Agta Tinggilan Yogad Maeng Adasen Banac Masadlit Mabaca Balatoc Binongan Gubang Inlaud Danao Hanglulo Tuwali Ikaluna	Badjao Kalagan Samal Kalibugan

source: NCIP

tence could still be revoked if a member of the tribe opposes the sentence.

In cases when the death penalty is handed down, they make sure that blood is not shed. The Ubo Manobo believes that bad luck would mark the spot where the blood of a convict drops. Thus, a death sentence is usually carried out by striking the convict's head with a blunt instrument, or by drowning.

The wife of the Datu is called Bai. She takes over the tasks and responsi-

bilities of the Datu in his absence. As the spouse of the Datu, she is expected to adapt to the culture of her husband, especially, if she does not belong to the same tribe. And if proven capable, she can also exercise the same functions as that of the Datu.

The women of the Ubo Manobo are accorded the highest respect by the men of the tribe. In the past, they carried household implements and belongings, along with the children—while the men

only carried their weapons—not because the women were oppressed, but because the men had to be ready to defend their wives and children in case of an attack. By carrying the household implements and children with her, the women ensured the survival of the family even if the men perished in the attack.

The Pamuwa oversees the economic activities of the tribe and leads in observing the tribe's traditional planting practices. They engaged in diversified farming and planted other crops to ensure they wouldn't go hungry in between harvests.

The Ubo Manobo considers the forest to be sacred and believe that

the souls of their departed kin inhabit the place. The forest also serves as their hunting ground and is a place where they build their altars.

**Matigsalog**

**San Fernando, Bukidnon**

The Matigsalog can be found in Bukidnon and Davao. The name Matigsalog derives from the word *salug* which means river; therefore one who



photos taken by Leah Homers/CSI

## FEATURES

dwells near the river. The source of the Matigsalog river goes through the towns of Pantaron, Matabos, Matapi and ends in Tigowoanon.

From the start, the Matigsalog were neither upland nor forest dwellers. The migration only started with the arrival of settlers who, taking advantage of their innate kindness and to a certain extent, their ignorance, appropriated the choicest and the most productive land for themselves and pushed them further away. They retreated to where they are mostly situated now thinking that the lowlanders would not be interested in such a rugged and remote setting that has little to offer compared to the lowlands.

Since then, the Lumad survived because their ancestors taught them that in order to do so, they must learn to live in harmony with the forests and learn to harness its bounty. The settlers remained in the lowlands because it was easier to farm, and the market was more accessible. They were also aware of the value of the land.

The Lumad now prefer to stay where they are now because they are worried of being dispossessed of their ancestral lands.

Like the Ubo Manobo, the Matigsalog is headed by the *Aggalon/Dayowan* or Supreme Datu. He is aided by the *Talowntawan* or the Council of Elders. The *Bibiyuon* functions as the Bai, and the *Bagani* as the tribal warrior. The agriculturist is called the *Kalahayon* while the *Tumanoron* functions as the tribe's Spiritual healer. They also have their version of the Supreme Court called *Taluosayan*.

Choosing a Datu is based on the following considerations:

- that the candidate is a descendant of the Datu; and
- that he is knowledgeable about the Lumad system and culture.

This means that he knows how to settle disputes, ensures that there is no bloodshed between warring parties, and is respected by the people; the people themselves choose whom to designate as the Datu.

In clan disputes, particularly if it has been on-going for some time without any sign of easing, the Datu usually holds a *pakang* or the peace pact to put a stop to hostilities. The disputing clans are required to bring a pig and a chicken for the ritual sacrifice. As the pigs are led forward into the ritual area, the persons holding or leading them are each required to stab the other's pig at the same time. After which the two chickens are bound together at their necks. These fastenings are later cut, signifying an end to the dispute.

If the dispute shows no signs of abating, the death penalty is finally handed down. The offender is meted the sentence by being struck by a *pahol*, a kind of wood indigenous to the area.

*We have a territory.  
We have the  
people.  
We have laws  
and a language.  
We are a nation.*

*Fulong Pet Moranos  
Blaan*

The struggle of Indigenous Peoples in Mindanao for the recognition of their sovereignty over their ancestral domain is never more clearly articulated than in the preceding quote. After decades of displacement from their ancestral lands and their continuing poverty and marginalization, the IPs are now actively working towards the preservation of their culture, territory and governance. This is the only way they can reclaim their dominion over their ancestral domains. 🌿

### Note

- <sup>1</sup> Tri-People Conference on Land for Peace Proceedings and Handbook.

**I**n a predominantly agricultural country, secure access to land resources or land ownership is basic to ensuring the equitable development of all sectors. In the Philippines, where land ownership is highly skewed, addressing the inequitable land ownership structure is imperative to achieving genuine development and peace.

The forty-two land-related laws issued by both the colonial and independent Philippine governments over the years were attempts to address the twin problems of skewed land ownership and poverty, and to quell peasant unrest. Unfortunately, these measures were largely palliative and did not address the root cause of the problem, i.e. inequitable access to land. Hence, these laws neither addressed landlessness nor stifled peasant rebellion.

While the Comprehensive Agrarian Reform Program (CARP) was dubbed as the most comprehensive land redistribution program, it was also passed, not because the Aquino government firmly believed in agrarian reform, but because the government needed to mollify the peasants. During the period (late 1980s) when it was passed, there was growing discontent and restlessness. Protesting peasants had just been mowed down mercilessly by police in the infamous Mendiola massacre.

### Accomplishments under CARP

The Comprehensive Agrarian Reform Law (CARL), which laid the basis for CARP, was enacted in June 10, 1988. The CARP was deemed comprehensive compared to previous land reform legislations since it aimed to redistribute all private and public agricultural lands

# Status and Prospects of Agrarian Reform Implementation

BY CARMINA B. FLORES-OBANIL

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regardless of tenurial arrangements and crops and to provide support services such as credit, infrastructure, etc to the beneficiaries of the program. Two agencies were mandated to implement the program: the Department of Agrarian Reform (DAR) to distribute private agricultural lands and the Department of Environment and Natural Resources (DENR) to award stewardship grants for public alienable and disposable lands and forest lands.

The program aimed to distribute 10.3 million hectares of agricultural lands to 3.9 million small tenants over a period of ten years.<sup>1</sup> However, subsequent area validations conducted by DAR and DENR led to reductions in CARP's coverage; from 10.3 million hectares to 8.1 million to 8.06 million hectares. Landless peasants who stood to

benefit from the program remained optimistic notwithstanding the scope cut.

But its implementation left much to be desired. Based on the reports of the implementing agencies, CARP's land distribution accomplishment, as of 2005, still stood at 6.58 million hectares. (See *Table 1 on centerspread*) Some three million agrarian reform beneficiaries have benefited from the program.

As for the leasehold component of the program, DAR reports show that around 1.6 million hectares are under leasehold arrangements with 1.1 million farmer beneficiaries.

Around 1.48 million hectares still remain to be distributed before the funding for the program runs out in 2008. Of the remaining balance, DAR will have to distribute around 640,000 hectares of private agricultural land, while DENR

still needs to distribute around 900,929 hectares of public land. (See *Table 1*)

## Lowest Accomplishments

The implementation of CARP has noticeably slowed down in the last five years of the Arroyo administration. This stems partly from the very low targets—the distribution of only 100,000 hectares of private agricultural lands and 100,000 hectares of public lands—set by President Arroyo during her 2001 State of the Nation Address. The limited funding allocated to the program is also to blame for the delays.

When President Arroyo assumed office in 2001, the government needed to distribute 1.09 million hectares. Even assuming that the administration manages to accomplish its set targets, there would still be a distribution gap of

309,000 hectares. Government projections way back in 2001 show that they were already contemplating a three-year extension of the land distribution efforts beyond the 2008 deadline. (See Table 2 on centerspread.)

But even the extension period may require more than three years since the Arroyo administration failed to meet its already low targets. Table 3 shows that except for 2001, when DAR achieved the target, government had been unable to achieve its land distribution targets over the years. (See Table 3 on centerspread.)

President Arroyo's land distribution performance pales in comparison to the performance of the administrations before her. In terms of accomplishment, the Arroyo administration posted the lowest average accomplishment in land distribution compared to its predecessors. (See Table 4 on centerspread.)

**Misleading Figures**

Even worse, questions are being raised over the veracity of the reported accomplishments and the remaining balance for distribution under CARP. An analysis of DAR and DENR's data reveals that instead of 1.48 million hectares, there actually 2.51 million hectares of land that have yet to be distributed under CARP. (See Table 5 on centerspread.)

DAR reported that it still has a land distribution balance of around 600,000 hectares but this may not be entirely accurate since over-accomplishments using the other modes of acquisition have been deducted from the working scope. While it is but proper for DAR and DENR to report their actual accomplishments, any excess accomplishment outside the defined working scope should have been included as additional targets too. By subtracting the excess lands distributed under the other modes of acquisition in the original working scope, the balance for the two agencies (especially DAR) appeared lower compared to what it still needs to distribute given the original target. If the "over-accomplishments" were not included, the actual DAR balance

would stand at 1.35 million hectares and not 600,000 as DAR claims.

The results of the 2001 Presidential Agrarian Reform Council (PARC) Audit also show discrepancies in the accomplishment reports among the regional, provincial and municipal offices of DAR. (The Audit entailed an inspection of both the physical and financial accomplishments of selected projects

*The results of a PARC Audit show discrepancies in the accomplishments posted by the regional, provincial, and municipal offices of DAR*

and activities in selected provinces and municipalities.) The Audit report noted that a big number of Emancipation Patents (EPs) and Certificate of Land Ownership Awards (CLOAs) reported as distributed are still pending at the DAR municipal or provincial offices.

An independent scope validation study of seven provinces, which was conducted in 2003 by various non-government organizations (NGOs), also confirmed the problems cited by the PARC Audit. The findings prompted civil society organizations to call for a nationwide validation of both the accomplishment and scope of CARP.

**Budget Woes**

From the very start, CARP had been burdened by an insufficient budget. Over the years, it suffered even more budget cuts.

The actual funding requirement for implementing CARP was estimated by the Presidential Agrarian Reform Council (PARC) in 1987 at PhP221.09 billion. The promulgators of R.A. 6657 pegged the full cost of CARP implementation at PhP285 billion. Unfortunately, under RA 6657 and RA 8532, only PhP100.00 billion was allocated for CARP. These made implementation tricky from the start.

The subsequent budget cuts further hampered the implementation of the program. Since 1999, at least PhP14.8 billion have been slashed from the proposed budget for CARP. As a result, lack

*DAR figures show that in the last five years, the percentage of women ARBs in agrarian reform communities (ARCs) has remained at a measly 23 percent*



of funding became a convenient excuse for many DAR officials for their underperformance in land distribution and support services delivery. (See Table 6 on centerspread.)

There is a large gap between the estimated budgetary requirement needed to complete the program and what is actually allocated by government. Based on DAR's estimates, CARP requires PhP165 billion between 2001 to 2008 to fund the completion of the program. Since RA 8532 only provided an additional PhP50 billion in 1998, there is a deficit amounting to PhP115 billion for this period. The PhP38-B Marcos ill-gotten wealth would have helped reduce the PhP115 billion-deficit. However, only PhP27 billion of the recovered Marcos-loot would have been used for CARP since the PhP10 billion was pledged for the indemnification of human rights victims.

But even the PhP27 billion might not have been used for agrarian reform because peasant organizations and agrarian reform advocates uncovered reports which allege that part of the recovered Marcos-loot had been used for GMA's hybrid rice program, fertilizer distribution and other projects not connected with agrarian reform. The reports prompted official investigations by the House Committee of Agrarian Reform and the Senate Committee on Agriculture on the status of the fund.

The PhP14.8 B slashed from the CARP budget would have been enough to fund another year of CARP operations. Ideally, DAR should have exerted more effort to convince the ad-





Photos by Alex Baluyut

important role being played by women in the development of the awarded land.

**“Second Generation Problems”**

The host of second-generation problems [such as the cancellations of land titles (i.e. Emancipation Patents and Certificates of Land Ownership Award), land use conversions, and reversal of previous decisions mandating the coverage of properties under CARP] are mostly the handiwork of devious landowners. These landowners have been relentlessly pursuing various avenues to have their lands declared as exempted or excluded from the coverage of CARP or to have part of their previous landholdings declared as their retention areas even if they have already availed of the same privilege in their other properties. But there are also instances wherein technicalities (i.e. failure or lapses on the part of the DAR personnel to follow established procedures) were used as an excuse by landowners to demand the cancellation of EPs and CLOAs that have been issued to agrarian reform beneficiaries.

DAR has yet to reveal the extent of CARP-covered lands affected by second-generation problems. At this point, the data on cancellations from the different departments of DAR are confusing. The DAR Management Information Service (MIS) May 2000 data reveal that around 374,266.05 hectares have been affected by cancellations while the 1999 DAR Planning Service (PS) data states that only 93,537.15 hectares have been affected by cancellations.

However, even given these figures, it is very hard to determine the real extent of lands affected by these cancellations given that some petitions for cancellation are still pending. DAR also has no data on how many lands are covered by exemption, retention and even conversion applications which if approved will necessitate the cancellation of EPs and CLOAs issued to ARBs.

**Stiff Landowner Resistance**

In an attempt to derail the distribution or stop the installment of agrarian reform beneficiaries in the awarded lands, many landowners have resorted to filing agrarian cases against ARBs in

ministration to provide sufficient funding for CARP. Instead, DAR has been content at citing the budget deficiencies to explain away their low yearly land acquisition and distribution accomplishment. Yet, DAR has also been unable to answer accusations that it has been remiss in conducting the compulsory acquisition of CARP-covered lands, which it is legally mandated to do.

**Privatizing Meager Support**

Under CARP, the government is mandated to provide a host of support services to the agrarian reform beneficiaries (ARBs) so that they can become more productive. In DAR Sec. Ernesto Garilao’s term, government adopted the agrarian reform community (ARC) approach. Under this method, money from the government that has been allocated for support services and foreign grants and loans for the support services component of CARP were poured into identified communities. While this helped ARBs improve their lot, only 1/3 of the total number of ARBs actually benefited from the ARC approach.

A debate is now raging over whether to devote CARP’s budget to land distribution or to spend it for support services. Understandably, the landowners seeking to evade CARP are supportive of the proposal to allocate CARP’s resources to support services rather than to pursue land distribution further. The thing is, both land distribution and support service delivery are crucial to achieving the over-all

goals of the agrarian reform program. Only by pursuing both would government be able to address land ownership inequity and improve the lives of landless small farmers.

**Engendering Inequality**

CARP ostensibly seeks to empower both men and women landless farmers. Sadly, the rhetoric of empowerment and equal recognition is not reflected in the reported accomplishments of CARP or even in the policies that will supposedly benefit them.

Data from DAR shows that in the last five years, the percentage of women ARBs in agrarian reform communities (ARCs) has not increased but has remained at only 23 percent. (See Table 7 on centerspread.)

Table 8 (see centerspread) shows that the number of EP & CLOA holders according to gender. The percentage of women CLOA holders is 33 percent, which is a bit higher than the 20.5 percent women EP holders.

Many women farmers complain that they have been treated as “secondary beneficiaries” under CARP. Some have been excluded outright (by not having their names included) in the titles awarded to their husband despite their contribution in tilling the land. Some complained that though their names have been included in the title, it is still

in the “married to” category rather than in the “and” category which women leaders consider as more empowering and which gives more recognition to the

*To derail the distribution of awarded parcels of land or stop the installment of beneficiaries, most landowners file agrarian cases in the regular courts or the special agrarian courts against farmers*

the regular courts or the special agrarian courts. These regular courts and special agrarian reform courts tend to issue temporary restraining orders (TROs), which further delay CARP implementation.

The landowners also resort to filing cases like estafa and theft against the tenants to disrupt the land distribution process. Such was the tactic employed by landowners in Negros to douse the initiatives of DAR personnel who became active in the ARB installation campaign in 1998. Since the government could not even provide the necessary legal support to defend their own personnel much less the ARBs, this landowner tactic became an effective tool to discourage further action on the part of the local DAR personnel.

The Supreme Court already ruled and clarified that temporary restraining orders (TRO) cannot be issued against DAR in its exercise of its land distribution function. But the local DAR personnel have not been persuaded to aggressively pursue distribution and installation initiatives at the ground level.

An even more alarming development are the decisions penned by the Court of Appeals and the Supreme Court that could reverse previous land distribution gains. For instance, the decision of the Supreme Court to overturn the win-win solution brokered by President Ramos on the Mapalad case, entitled *Fortich vs. Corona*, has set a dangerous precedent that questions the legal personality of farmers and removes the rights of farmer beneficiaries to defend and protect their claims over lands awarded to them under CARP. The Court decision also virtually de-

prives seasonal farm workers of the right to own the lands they have been working on or have worked on.

Another case in point is the Supreme Court decision on the Asturias Chemical Industries case that exempted the landholding from Operation Land Transfer (OLT) on the basis that the land in question is mineralized or has mining potentials and should have never been covered under the program. Given the impetus created by another Supreme Court decision reversing its own ruling that the Mining Act is unconstitutional, landowners can use both Supreme Court decisions to have their lands exempted from CARP as long as they can provide sufficient proof that the land has mining potentials.

More dangerous, however, is the escalating number of harassments and killings perpetrated against agrarian reform beneficiaries and other development workers advocating agrarian reform. Although an exact number is not available at this point, many cases of harassments and killings are connected with the continuing struggle for agrarian reform. In most of the cases, the perpetra-

tors are known associates or workers of the landowner.

**Ending CARP**

With 2008 looming over the horizon, DAR has commissioned a study to lay-out possible scenarios for the implementation of CARP beyond the deadline. Based on the premise that the program is 83% complete, the DAR-GTZ (German Technical Cooperation) study laid out four scenarios that could guide DAR in drafting plans for CARP and the department.

The most dangerous and unacceptable scenario recommends the abandonment of the distribution of the remaining targets of CARP. This scenario also proposes the allocation of CARP's meager resources for support services delivery only. This scenario should not have been even considered in the first place since both land distribution and support services delivery are crucial to the success of CARP.

Already, the anomalies uncovered in the CARP budget allocation have prompted some senators to call for the abolition of DAR and an end to CARP



Alex Baluyut

implementation. This is a bane for the many small landless farmers and farmworkers who have yet to claim the promised lands. To them, CARP, even with all its flaws and problems, still represent a glimmer of hope that they will one day own and control the lands that they have been tilling for decades.

**What Must Be Done**

Government must immediately complete the program. It should set more realistic targets that could cover lands already identified for distribution, especially in the coconut lands and sugar lands which comprise the bulk of the remaining balance for land distribution. For the remaining three years, the targets of CARP should correspond to the remaining lands for distribution to ensure the completion of land distribution under CARP by 2008. Partnerships can be initiated between the DAR, DENR, POs and NGOs working with farmers in the countryside to fast track land distribution and even beneficiary installation. As of 2005, DAR reports show that at least 35,000 agrarian reform beneficiaries remain uninstalled in their awarded lands.

It is crucial that the targets are complemented with sufficient budget. DAR has been asking for another Php100 billion to cover their reported balance of 600,000 hectares. But this figure is insufficient if we go by the PARC estimates that at least Php120 billion is still needed to cover CARP's remaining balance of 600,000 hectares.

Centro Saka's analysis of DAR's own data reveals that its remaining balance is actually 1.35 million hectares and not 600,000 hectares as claimed by the agency. This should therefore be carefully examined and extensively validated so as to serve as a realistic point of projecting CARP budgetary needs in the years to come.

The Php120 billion PARC estimates do not include the additional 500,000 hectares that must still be covered by CARP and which DAR has unearthed through its Internal CARP Scope (ICS) Validation. The 500,000-hectare figure is quite conservative since the April 2006 preliminary ICS results show that around 1.377 million hectares were not

included in the targets of CARP. All of these additional lands for coverage should be considered carefully before DAR makes a request for funding extension.

Government should also be willing to oppose legislative moves that could further derail the program through budget cuts. Since agrarian reform does not end with land distribution, sufficient funding should also be allocated for support services delivery. There is, moreover, a need to expand the numbers of ARCs to cover all the beneficiaries of the program.

A comprehensive validation of the scope and the accomplishment of the program should also be pursued to provide a clear picture on what must still be done in line with the implementation of CARP. The inventory of CARP scope initiated by DAR can serve as a basis for accurate planning and budgeting for CARP implementation in the future. The PARC Audit, on the other hand, can pinpoint problems in agrarian reform implementation and identify resolutions to further fast track implementation.

The legislative and executive branches also need to pass policies that would secure the reported gains under CARP. A prescriptive period could be set as a deadline for landowners who question agrarian reform coverage of their landholdings. Since inquiries on the validity of regular land titles are only allowed within a year after the title transfer, EPs and CLOAs should be accorded the same respect under our laws. At the same time, DAR should reject applications for conversion, exemption, and exclusion of lands where EPs and CLOAs have already been distributed. This is in keeping with the agency's own administrative orders and memoranda.<sup>2</sup>


Congress needs to continue to work for relevant legislative measures that can help agrarian reform beneficiaries. A comprehensive land use code should help strike a balance between the urban land requirement of the population and the need to protect the country's prime agricultural lands in the context of food-self sufficiency and food security. The

land use code should also help firm up rules and regulations on land use conversion and institute stiff penalties for those who undertake illegal land conversion. A progressive land taxation should also be instituted to discourage land hoarding and reconsolidation.

The Office of the President (OP) and the judiciary should

also be cautious in deciding over agrarian cases. Government should review the Fortich decision<sup>3</sup> and the other cases whose decisions have been based on Fortich. At the DAR level, adequate mechanisms that establish the legal personality of small farmers should be immediately instituted.

Land is at the core of rural women empowerment. Since opportunities in rural development are tied to the land, women farmers should have access and control over the land they till. Efforts should be done to recognize the rights of women to be beneficiaries. Data should be disaggregated as to provide a clear picture of what must still be done to empower and recognize women's' land rights.

With the still sizable balance left for distribution and the fact that these are the contentious and problematic landholdings, the government will undoubtedly encounter further difficulties in implementing the program. Unfortunately for the farmers, government has yet to muster the political will to redistribute these private landholdings through compulsory acquisition. If government fails to address these issues, landlessness may yet prevail in the coming years. 

*Government must set realistic targets that could cover pieces of land already identified for distribution, especially in the coconut and sugar areas*

**Endnotes**

- <sup>1</sup> CARP was given another 10 years as a timeframe for finishing the land distribution process after 1998 under RA 8532. RA 8532 also provided an additional Php50 billion allocation as Agrarian Reform Fund (ARF) to continue CARP implementation.
- <sup>2</sup> Memorandum Circular No. 9, series of 2004 sets a prescriptive period for questioning the validity of CLOAs and EPs.
- <sup>3</sup> The Fortich decision excluded seasonal farmworkers from the list of possible qualified beneficiaries under CARP.

# Leaseback Arrangements Reversing Agrarian Reform Gains

BY CARMINA B. FLORES-OBANIL

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**T**he 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” 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 option was the introduction 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. Another proposal was the “alternative venture agreements” that agrarian reform beneficiaries (ARBs) may enter into “ideally” after land distribution was accomplished with the former landowners or corporations currently exercising property rights over these commercial farms/

Jimmy Domingo

## F E A T U R E S

plantations. Under DAR Administrative Order No. 2, series of 1999 or 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 of the abovementioned options have been roundly criticized because of their conceptual flaws, i.e. the state virtually abandons its mandate to distribute land and to provide adequate support services. Moreover, both schemes “bastardize” the essence of agrarian reform by giving the former landowner or the corporations control over the operation of these landholdings (Mendoza 1999). Even worse, the terms under such schemes usually turn out to be disadvantageous to agrarian reform beneficiaries (ARBs). In some cases, such arrangements were used to evade redistribution under agrarian reform. For instance, the land is given to a set of beneficiaries chosen by the landowner and not to the actual tillers of the land. These are the reasons why peasant organizations and agrarian reform advocates reject alternative venture agreements.

This paper attempts to assess the implementation of one of these alternative venture agreements, i.e. leaseback arrangements in the country. It will examine the legal framework behind the leaseback scheme; the process of how the scheme is usually implemented; its coverage so far; the impact of these leaseback agreements on the agrarian reform beneficiaries and over-all agrarian reform implementation. 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 in which a cooperative of workers-beneficiaries in a given plantation may enter into a land-use agreement with a multi-

national corporation or agribusiness corporation in cases where dividing the land is judged economically unsound or not feasible. (Ofreneo 2000)

Under AO No. 2 or JEEP, lease contracts are contracts “where the beneficiaries 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 will acquire usufructuary rights over the lands for an agreed period while the ARBs are usually hired as workers or tillers in their awarded lands.

Lease arrangements have also been defined as an arrangement where a farmer or a cooperative, which either owns or has been awarded a piece of land through agrarian reform will agree to rent out their land to a private investor or corporation. The farmers or the members of the cooperative will remain as workers, while the private investor or

*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 allowing lease on lands of public domain. But similar provisions in RA 6657 and the amending law RA 7905 (An Act to Strengthen the Implementation of the Comprehensive Agrarian Reform Program and for other Purposes) also support such modalities even in private agricultural lands.

In a leaseback study, 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 association), which provide an extensive discussion of the processes entailed in the distribution of these par-

***The controversial “market-assisted land reform” (MALR) and the “alternative venture agreements” have been criticized because under these schemes, the state virtually abandons its mandate to distribute land and to provide adequate support services to agrarian reform beneficiaries***

corporation controls the production, processing and marketing processes. 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 1979)

### 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 regarding agrarian reform as contained in the Comprehensive Agrarian Reform Law (CARL) or Republic Act No. 6657 (RA 6657). To wit,

*“The State may lease undeveloped lands of the public domain to qualified entities for the development*

particular lands that are already under lease, management, grower, or service contracts. Ofreneo also noted that CARL did not set any time limit for leaseback agreements nor did it prescribe any specific terms which the parties in a leaseback agreements may adhere to.

Other provisions in CARL, like Section 32 (on production-sharing) and Section 44 (as amended by RA 7905) 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 “that will 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.”

The Presidential Agrarian Reform Council (PARC), the highest policy making body for agrarian reform, came out

**Table 1. CARP Land Redistribution Accomplishment (in hectares) 1972 to Nov 2005\*/Dec 2005\*\***

	Original Scope (1988)	Revised Scope (1996)	Revalidated Scope	Accomplishment	Balance
DAR	3.8 M	4.3 M	4.29 M	3.65 M	0.64M
DENR	6.5 M	3.8 M	3.77 M	2.93 M	0.90M
CARP	10.3 M	8.1 M	8.06 M	6.58 M	1.48 M

Sources: [http://www.dar.gov.ph/dar\\_performance.htm](http://www.dar.gov.ph/dar_performance.htm); DAR, DENR, and CARP budget materials

\* Nov 2005 data for DAR

\*\* Dec 2005 data for DENR

**Table 2. Land Distribution Target (under DAR)**

Pres. Arroyo's Target for PAL Distribution	100,000 hectares
CARP Remaining Balance (as of Dec 2001)	1.09 million hectares
Projected Accomplishment (2002-2008)	700,000 hectares
Projected Land Distribution Gap	309,000 hectares
Projected Extension of LAD Deadline	three (3) years

Source: Department of Agrarian Reform

**Table 5. Summary of CARP Scope and Accomplishment, by Land Type and Agency (1972-Nov/Dec 2005)**

Agency/Land Type/ Mode of Acquisition	CARP Working Scope (hectares)	Total Accomplishment	Balance (Straight Deduction)	Balance
<b>DAR</b>	<b>4,290,453</b>	<b>3,653,482</b>	<b>636,971</b>	<b>1,350,576</b>
Private Agri Lands	2,996,105	2,033,588	962,623	1,350,576
OLT	579,520	556,288	23,232	23,232
GFI	229,796	158,246	71,550	71,550
VOS	396,684	525,197	(128,513)	-
CA	1,505,363	249,569	1,255,794	1,255,794
VLT	284,742	544,288	(259,546)	-
Non-PAL Lands	1,294,348	1,619,894	(325,546)	-
Settlements	566,332	705,039	(138,707)	-
Landed Estates	70,173	80,596	(10,423)	-
GOL/KKK	657,843	834,259	(206,416)	-
<b>DENR</b>	<b>3,771,411</b>	<b>2,937,070</b>	<b>834,431</b>	<b>900,929</b>
Public A & D Lands	2,502,000	1,601,071	900,929	900,929
ISF Areas	1,269,411	1,335,999	(66,588)	-
<b>Total</b>	<b>8,064,864</b>	<b>6,590,552</b>	<b>1,474,312</b>	<b>2,251,505</b>

Source: DAR Nov 2005 and DENR Dec 2005 Reports

**Table 6. Proposed and Approved Budget Allocations (1999-2006)**

Year	Proposed Budget (PhP)	Approved Budget (PhP)
1999	8,707,338,000	8,707,338,000
2000	11,861,673,000	11,861,673,000
2001	11,245,647,000	11,245,647,000
2002	10,688,217,000	10,688,217,000
2003	18,455,173,000	18,455,173,000
2004	14,763,579,000	14,763,579,000
2005	10,714,215,000	10,714,215,000
2006	10,714,215,000	10,714,215,000
<b>Total</b>		

Source: Department of Agrarian Reform

\* The Partnership of Agrarian Reform (PAR) claims that a total of PhP4.5 billion, for the creation and distribution and PhP3.3 billion for the 2000 CARP budget.

\*\* Though it may appear that the cut in the budget for the whole CARP budget was due to the wealth. This despite that, under the budget for CARP every year.

\*\*\*The government says that the PhP 8 billion cut from the GAA is not actually a cut from the Agrarian Reform Fund (Fund 158), but a proposed.

**Table 7. Gender and Development (GAD) Rating indicators of the BARBD's ALDA program**

Year	Women ARBs	Women Member of Organization	Women Holding Key Positions in Organization	Projects for Women	WARBs able to access credit services
2001	23.89	47.71	48.91	81.68	49.22
2002	23.35	47.37	49.53	85.40	52.38
2003	22.23	49.17	51.32	86.51	58.33
2004	23.39	49.33	52.40	88.05	62.28
2005	23.23	40.39	52.82	89.53	65.40

Source: [www.barbd.org](http://www.barbd.org)

**Table 8. Holders of Emancipation Certificate of Land Ownership by Category**

AR Title
Emancipation Patents (EPs)
Certificate of Land Ownership A

Source: NSCB, 2003

per year
ctares
ctares
ctares
ars

**Table 3. PAL Distribution under Pres. Arroyo**

Year	Target (in has)	Accomplishment (in has)	Private Agri Lands
2001	100,000	104,261	77,849
2002	110,917	99,301	No data
2003	101,321	97,305	No data
2004	110,046	104,069	78,191

Source: Compiled from DAR Accomplishment Tables 2001, 2002, and 2003; and data from [http://www.dar.gov.ph/dar\\_performance.htm](http://www.dar.gov.ph/dar_performance.htm)

**Table 4. Average Agricultural Lands Distribution per Administration**

Administration	Distributed Agri Lands (average; in hectares)
Aquino (June 1988-June 1992)	135,420
Ramos (July 1992-June 1998)	314,895
Estrada (June 1998-Dec 2000)	133,355
Macapagal-Arroyo (Jan 2001- Dec 2005)	103,553

Source: DAR Reports

**Approved CARP Budgetary (1999-2006)**

Approved Budget (PhP)	Budget Cut (PhP)
7,707,338,000	1,000,000,000
1,245,647,000	616,026,000 *
8,514,538,000	2,731,109,000
9,488,217,000	1,200,000,000
9,025,258,000	9,175,623,000
4,626,208,000	137,371,000**
4,700,000,000	
6,500,000,000***	
	14,860,129,000

in (DAR)

and Rural Development Services (PARRDS) of which PhP1.2 billion came from land acquisition came from support services, was cut from the

for 2004 was very low, the government admitted deducted from the PhP38-billion Marcos ill-gotten law, the government must allocate at least PhP3

2.2 billion cut from the usual allocation of the DAR since any budget cut will be replaced through the thus its budget will even surpass what has been

**Land Ownership Awards (CLOA) and Sex of Holders, 2003**

	Total	Women	Men
Land Ownership Award (CLOA)	3077	633	2444
	50327	16616	33711

**With only two years remaining in the 10-year extension of the Comprehensive Agrarian Reform Program (CARP), most of the country's small farmers are still landless. Even worse is the government's dismal, if not faltering, land distribution performance in the face of huge backlogs. The tables in this section show that the concern raised by small farmers over the seemingly imminent failure of the agrarian reform program may not be unfounded after all.**

# Reversing Agrarian Reform Gains

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with 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, 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.”

This strategy was later detailed in two controversial administrative orders: Administrative Orders (AOs) No. 2, series of 1999 and No. 9, series of 1998 which prescribes the Rules and Regulations on the Acquisition, Valuation, Compensation and Distribution of Deferred Commercial Farms.” AO 2 or “Joint Economic Enterprise for Productivity (JEEP) fleshed out the rules and regulations governing joint economic

enterprises in agrarian reform areas, while AO 9 defined the rules on commercial farms distribution and again introduced the different joint economic enterprise schemes under AO 2. AO 2 also abolished the maximum 10-year period for lease arrangements prescribed under AO 9.

To implement all these rules and regulations, Special Orders No. 325 and 789, series of 2003 were released creating the Alternative Venture Agreements (AVA) Task Force, Working Group and Secretariat. On 22 October 2005, Special Order No. 731, series of 2005, was released. This amended the composition of the Alternative Venture Agreements (AVA) Task Force, Working Group and Secretariat and reiterated the functions and responsibilities of these different entities.

## The AVA Task Force

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

The main work of the AVA TF is to render technical support to the PARC, and the PARCCOM in processing the AVAs passed to the two bodies for approval. Under RA7905 which amended RA 6657 or 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

Alex Baluyut



final approving body for these AVA applications.

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

- Evaluating alternative venture agreements (AVAs) duly endorsed by Provincial Agrarian Reform Coordinating Committees (PARCCOM) to the PARC, for approval/disapproval;

- Recommend contract amendments to the AVAs being reviewed to ensure equitable and sustainable arrangements between investors and agrarian reform beneficiaries (ARBs);

- 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;

- Provide updates and present findings to the PARC regarding the evaluation of AVA proposals; and,

***The Voluntary Land Transfer/Direct Payment Scheme (VLT/DPS) is one of the most criticized modes of distribution under CARP since it exposes potential beneficiaries to possible abuse by the former landowner or corporation***



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Monitor compliance of contracting parties to approved AVAs.

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

tor 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.

### VLT/DPS: Main Modes of Distribution for AVA-covered Lands

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. Adir 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 unlike in the other modes like compulsory acquisition (CA). She admitted that in some cases, the alternative venture agreements precede the actual VLT/DPS coverage of the landholdings. This has compelled them to recommend the cessation of the AVAs until the land distribution process is actually completed.

The VLT/DPS is one of the most 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 ARBs, there is no guarantee that potential ARBs will not be duped into paying higher 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 been the norm in many cases, i.e. the land price set is usually much higher and there are often strings attached to the distribution.

Borras (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 VLT/DPS offer of landowners are usually cancelled in cases where another set of beneficiaries (not the set of potential ARBs endorsed by the former landowner) were selected by the Department of Agrarian Reform (DAR).

### Leaseback Coverage

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

The only available data so far is the list (see Annex A) 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. These are the 8,860 hectares covered by the Dolefil and DARBCI (Dolefil Agrarian Reform Beneficiaries Cooperative Inc.) leaseback agreement in Bukidnon and the 6,827 hectares covered by the FPPI or Filipinas Palmoil Industries Inc.-N G P I M P C / NGEIMPC (NDC Guthrie Plantation Inc Multi-Purpose Cooperative/ NDC Guthrie Estates Inc. Multi-Purpose Cooperative) leaseback agreement in Agusan del Sur.

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 at 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 to be distributed after 1998. In the July 1999 data of the DAR Planning Division, at least 1,935 commercial farms covering an area of 67,555.9951 hectares were supposed to be distributed after the commercial farm deferment expired in 1998. In Davao, there are 22 plantations under deferment, nine of which are under

lease contracts (Homeret 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-

*Since the VLT/DPS usually entails direct bargaining between the landowners and the beneficiaries, there is no guarantee that potential ARBs will not be duped into paying exorbitant prices for the land. Sadly, government’s role is usually relegated to assisting potential ARBs in accessing and securing loans for land payment*

rolling plateau cut by deep and wide canyons of the Polangui, Tagoloan, and Cagayan rivers and their tributaries, and densely-forested mountains. Bukidnon’s soil is considered to be one of the most fertile in the region and even the country. With heavy, evenly distributed annual rainfall and pleasantly 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. Dole Philippines and Mt. Kitanglad Agri-Ventures, Inc. are into banana production. Bukidnon Sugar Milling Corporation (BUSCO) and Crystal Sugar Milling are into 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 owner-operated farms in the area.

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

One of the landholdings which was re-distributed 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 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 who lived in the areas for PhP500-800 for untitled lands and PhP1,000 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, 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

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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 into “relatives”), a Lumad organization of the Higaonon tribe, whose members hold Certificates of Land Title (CLT).

The 151 hectares in Brgy. Cawayan went to CIARBA members. The records show that 17 Mother Certificates of Land-ownership and Acquisition (Mother CLOAs) were awarded to CIARBA members in 1991. As there were actual cultivators in some of the lands, the mother CLOAs were raffled off. 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-ARB received one to three hectares of land. In a mother CLOA, there are about 2-5 people sharing the title. The farmers-owners converted the land from coffee production to corn production.

Non-governmental organizations helped in facilitating the identification of agrarian reform beneficiaries (ARBs) in the area. Brgy. Cawayan and Impalutao were the first batch of TRIPARRD beneficiaries and pilot areas in Bukidnon. TRIPARRD is a partnership among NGOs (in this case, Kaanib Foundation [KFI]), peoples’ organizations and the DAR. These also became project areas of PhilDHRRRA in the 90s. PhilDHRRRA helped organize twelve peoples’ organizations (including CIARBA) and formed them into PALAMBU. PALAMBU educated its members about CARP—their rights to claim land and support services. The area was likewise one of the first agrarian reform communities (ARCs) under former DAR secretary Ernesto Garilao.

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 lands and livelihoods. The DAR via TRIPARRD provided leadership trainings under the Special Project Organization package to CIARBA. The leadership training focused on strengthening institutional building (SIB). But other than this, no additional support services such as access to capital and finance, which are very 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 a cooperative.

The farmers-landowners went into individual farming from 1992 to 2000. Because of 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 allowed the farmers to survive and ensnared 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 of Ka Ramir is valued at PhP14,000 per hectare payable within 30 years. The terms of payment varied but according to him, after each harvest, he was supposed to give 1% of his harvest-income as initial payment. The next payment would be pegged at 2% for 10 years or roughly PhP280 per year. This would increase exponentially 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 the awarding the mother CLOAs in 1991, government virtually left many farmers to fend for themselves. Since the farmers were financially broke, they were later unable to pay the amortization fees. However, for some who were able to pay their Farmer Advance Remittance to the Land Bank of the Philippines (LBP), no ledgers were produced by LBP to prove that the farmers paid their dues. Many members of CIARBA reportedly made numerous requests to the local LBP 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. For Ka Ramir and Ka Helen, this seemed to be a normal procedure on the part of Del Monte.

Two years later, a representative of the Provincial LBP went to Brgy. Cawayan to collect the amortization payments due them. But CIARBA was unable to produce payment. The LBP representative threatened foreclosure for non-payment. 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, 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 and Victor Dumutan and Bobby Villanoy as field

supervisors) 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 cited advan-

**Table 1. Estimated CARP Lands Covered by AVAs**

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

Source: AVA TF List, Ofreneo (2000)

tages were the following: (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.

accept the offer of Del Monte. PALAMBU also talked to the members of CIARBA and informed them about the down-side of such an arrangement. There was of course a "great debate" within CIARBA. Ka Ramir recollected that he was even punched in the face for his resistance to the leaseback contract.

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 merely take care of the production, labor and management of the land.

Del Monte offered the following: (1) a 25-years lease; (2) annual land rent of PhP5,150 per hectare (half of which will go to their amortization dues and the half to the farmers); (3) 3-year cash advances for the first 3 years but after that, only one-year cash advances; (4) payment for permanent crops or trees in the lands (ranging from PhP 50-800.00 depending on the tree). So, a farmer like Ka Ramir with three hectares of land would get PhP15,450 a year or roughly PhP429 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.



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The negotiations took more than a year. NGOs and civil society groups such as PALAMBU protested the leaseback arrangement between Del Monte and CIARBA and deemed it illegal under Administrative Order no. 2. Esther Villarín, a paralegal of PALAMBU, went to Brgy. Cawayan and talked to the barangay captain to convince him not to

## F E A T U R E S

Finally, on 23 May 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. Present during the

### Leaseback Woes: Impact to ARBs and CARP

Five years into the contract, Ka Helen and Ka Ramir have yet to receive a copy of the signed contract. They verbally

bers is whether Del Monte had indeed paid their amortization. Based on their documents, the receipt given by Del Monte specifies the amount of rent and advances they had and for which years. It specifies the amount of amortization due to the LBP as well. 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 have been paid but the agencies and the corporation have yet to respond.

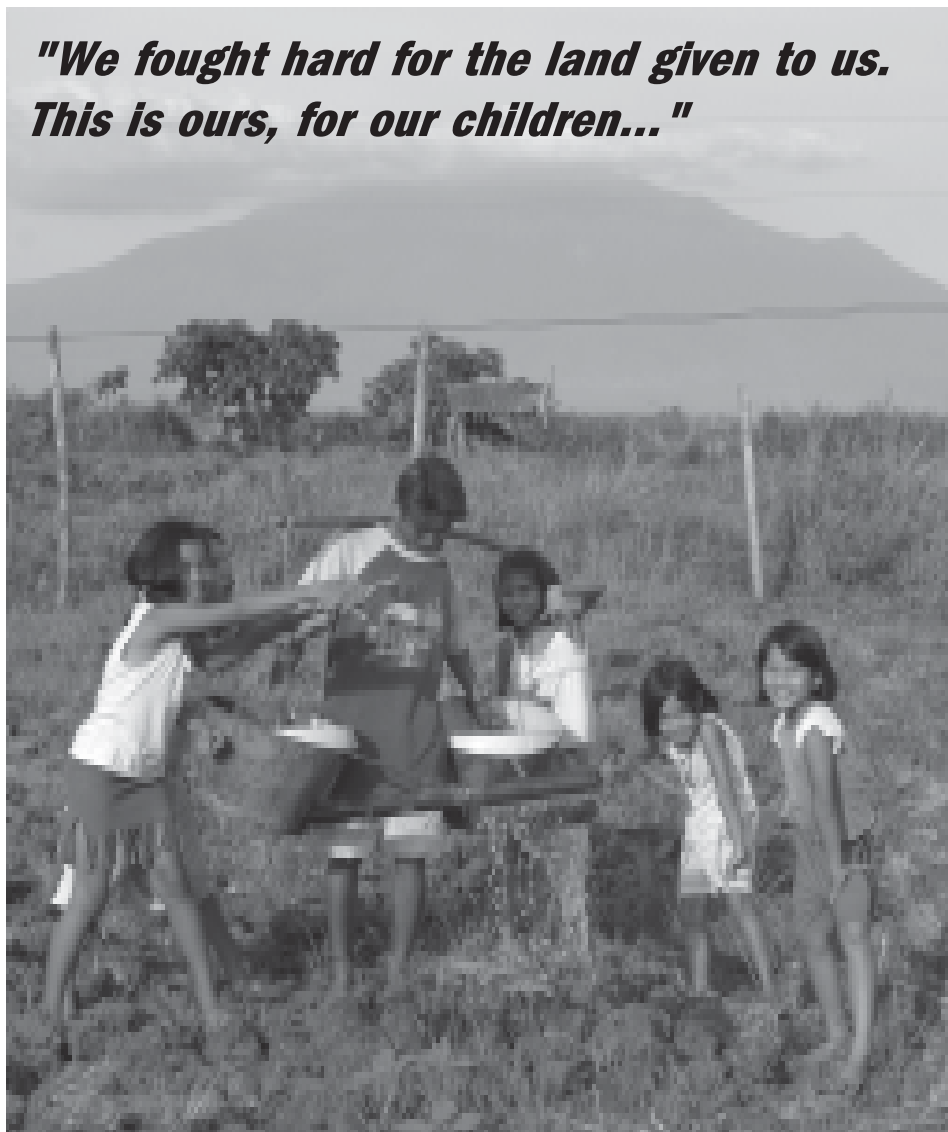
It actually took less than a year for the farmers to realize the inherent flaws of the leaseback contract. In 2002, Hernando Talugco, the captain of Brgy. Cawayan and a member of CIARBA talked to Esther and asked her if they could annul the contract because they do not like the way that the leaseback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

Del Monte also practically reneged on its promise of hiring them as farm workers. Among the ARBs of CIARBA, only one resident became a permanent worker. The others who have been recommended by the landowner-beneficiary are either seasonal or were not accepted because they did not reach certain qualifications. Del Monte brought regular workers who hailed from Manolo Fortich and other areas.

Kapitan Hernando is not the only one frustrated by 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 Land Bank and Del Monte's offer looked good, so we agreed). Ka Helen is also frustrated because all the benefits that Del Monte assured were not 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

**"We fought hard for the land given to us. This is ours, for our children..."**



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

agreed 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 had not yet signed the contract. This is anomalous because the entire 17 mother CLOAs are already in leaseback contracts and the agribusiness operations are already in full swing.

Apart from the inexistent contract, one of the problems of the CIARBA mem-

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 to support their families and do not own land that they could till.

Today, given the same choice, they said that 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 nor contract that would support her claim to her land. "*Paano na si Gelo (her youngest son). 25 taon ang leaseback, di natin masasabi ang buhay*" (How about Gelo. 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, for instance, had a better contract because they compelled Del Monte to make Marco Lorenzo sign the contract before they entered into 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 farmer-leaser would need to pay his/her amortization directly to the LBP. At least these farmers were able to exercise their leverage and bargaining power.

Way before Del Monte entered the scene, in 1999, the ARBs of CIARBA were in negotiations for a contract growership with a Japanese company, HISUCOR for

planting sugarcane. The terms of the agreement were an annual land rent of PhP15,000/hectare, with a 15 year advance. And 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 they have with Del Monte compelled them to do some rethinking. For one, Ka Helen and Ka Ramir want to reclaim their land. But they 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 LGU to investigate complaints that Del Monte reneged on some of its promises 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.

Apart from 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.

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 pesos per hectare when the lease rental should have been pegged at more or less PhP6,000 pesos per hectare. Moreover, in exchange for a higher rental of PhP2,500 (compared to the PhP635 contained in the first lease agreement), the ARBs must surrender their land for another 25 years (the first lease expires in 2007 but the addendum which ostensibly raised the lease rental specifies another round of leaseback agreement set to expire at year 2032).

Ofreneo's study which also tackled the DOLE Philippines (Dolefil) and the DARBCI (Dolefil Agrarian Reform Beneficiaries Cooperative Inc.) leaseback



agreement in Bukidnon also show 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 ARBs (4,160 out of 9,298 workers) are now employed under the new lease contract. Thereby half of the ARBs are now dependent on the lease rentals as their main source of income. 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 per hectare is unfair when juxtaposed with the estimated net income of Stanfilco of PhP360,360.00 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

## FEATURES



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cial 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 as 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 have to return the unused portion of the lease rentals advanced them.

### Conclusion

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 ensure that the benefits of agrarian reform accrue to the ARBs. Since the initial studies showed that these leaseback agreements and other AVAs are detrimental to the agrarian reform beneficiaries, perhaps government should undertake serious rethinking and reconsider its track of pursuing this particular strategy.

A review of AO 2 that sets the rules and regulations for the implementation of leaseback and AVAs should also be pursued. Punitive measures and sanctions must be put in place to ensure that violations of individual or corporate entities under such agreements are addressed.

Government must also monitor and review leaseback arrangements, joint ventures or other similar schemes. 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.

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

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 ARBs are not fully enjoying the fruits of the agrarian reform. Hence, government would do well to draw up measures to address the issue. 🍌

hectare in Tawantawan should be pegged at PhP22,046 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 10<sup>th</sup> year, rate for the 11<sup>th</sup> to 15<sup>th</sup> year for renegotiation  
One-time signing bonus of P2,000 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 transfers all the decision-making powers over the land to Stanfilco and to a degree the advantages or finan-

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# Reform-Related B

# Matrix of Agrarian

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**D**uring the 13<sup>th</sup> Congress, both the House of Representatives and the Senate failed to pass new laws concerning agrarian reform. This can be attributed to various reasons like the lingering political crisis that has further doused hopes of cooperation between the executive and the legislature, the alleged preoccupation of some legislators in prioritizing the conduct of legislative inquiries rather than public hearings on the proposed agrarian-related bills, and extended periods required to deliberate on the national budget.

In the House of Representatives, the Philippine Center for Rural Development Studies or Centro Saka, Inc. (CSI) actively participated in supporting House Bill (HB) No. 2532 on the security of tenure of farmers and HB 2591 on the farmers' right to land. CSI also expressed its strong opposition to the proposed creation of an independent National Agrarian Reform Adjudication Commission (NARAC), under HB 390.

This agency was supposed to replace the existing Department of Agrarian Reform Adjudicatory Board (DARAB). CSI participated in congressional inquiries, which was prompted by House Resolution (HR) No.455, on the status of the P38 billion Marcos ill-gotten wealth and its alleged misuse. Likewise, CSI took part in the congressional inquiries prompted by HR204 on the reported unlawful filing of agrarian re-

lated cases before regular courts and the issuance of Temporary Restraining Orders (TROs) or injunction in the implementation of CARP.

In the Senate, a number of agrarian bills were filed by various senators. These bills included the following: 1. Senate Bill (SB) No. 10 on the guidelines on the cancellation of EPs and CLOAs; 2. SB 20 on the proposed amendments to Presidential Decree (PD) No. 717 or the Agri-Agra Law; 3. SB 238 on the Voluntary Land Transfer (VLT) scheme; 4. SB 239 on the proposed creation of the NARAC; and, 5. SB 1583 on directing the Department of Agrarian Reform (DAR) and the Department of Agriculture (DA) to submit annual reports before congress regarding the status of land use conversion and a review of its related policies and programs. But the Senator's attention were focused on the legislative inquiries into the alleged fertilizer scam and the coconut levy issue.

The matrix here shows the various agrarian-related legislative bills introduced during the 13<sup>th</sup> Congress:



## House Bills

Bill Number, Title, Author/s

HB 390, AN ACT CREATING THE NATIONAL AGRARIAN REFORM ADJUDICATION COMMISSION, DEFINING ITS POWERS AND FUNCTIONS, AND APPROPRIATING FUNDS THEREFOR, Cong. Roseller R. Barinaga

Salient Points

Position

Section 1 (The National Agrarian Reform Adjudication Commission: Creation, Composition and Jurisdiction) of the bill provides that "There shall be created a National Agrarian Reform Adjudication Commission, hereinafter known as the Commission, to be composed of a Chairman and fourteen (14) members. There shall be established a provincial office of the Commission in each province of the country, to be headed by a Provincial Agrarian Reform Adjudicator (PARAD). The Commission shall be attached to the Department of Agrarian Reform (DAR) for program and policy coordination only."

"The Commission may sit en banc or in five (5) divisions, each composed of three (3) members."

"The Commission shall exercise its adjudicatory and all other powers, functions, and duties, through its divisions. The first, second and third divisions shall handle cases coming from Luzon and the fourth and fifth divisions shall handle cases from Visayas and Mindanao, respectively. The divisions shall have exclusive appellate jurisdiction over cases decided by the PARADs within their respective territorial jurisdictions."

"The Chairman shall be the Presiding Commissioner of the first division and shall designate the presiding commis-

sioners of the other divisions. In case of the effective absence or incapacity of the Chairman, the Presiding Commissioner of the second division shall be the acting chairman."

NARAC will only add an unnecessary layer in the bureaucracy.

House Bill No. 390 provides for the creation of an independent body, which is the NARAC. Centro Saka sees that there is no need to create another body as provided in HB 390, as this will only add an unnecessary layer in the bureaucracy and further constrict government's already limited resources. At the same time, since the creation of NARAC would require a period of adjustment and transition to effectively function, this may contribute to the further delay of the resolution of case backlogs. As it is, the DARAB has already registered an increasing number of case resolutions in recent time. The wiping out of the case backlogs may already be addressed by increasing the number of full-time members in the DARAB, improving the procedure in the deliberation of appealed cases, and by augmenting its fiscal and administrative resources.

The alleged lack of impartiality of the DARAB lacks legal and factual basis.

One of the main justifications for the passage of the HB 390 is the purported lack of impartiality of the DARAB given its functional relationship with the DAR and the nature of functions of its members. This argument lacks any legal or factual basis since the DARAB has no jurisdiction to review or modify the de-

isions of the Office of the Secretary and vice versa.

Under the present set-up, the DAR has policy-making, administrative and quasi-judicial functions. These functions are clearly delineated and assigned to the different units and entities within the department. All agrarian disputes, subject to certain exceptions, are under the jurisdiction of the DARAB. The Office of the Secretary, on the other hand, resolves administrative cases. Also, members of the DARAB may inhibit themselves in the hearing and resolution of cases if they have advised farmer-litigants and former landowners on specific agrarian cases. Thus, there would be no occasion for the Chair and the four (4) part-time members of the DARAB who also occupy administrative functions to act in conflicting capacities.

Instead of passing HB 390 into law, Centro Saka recommends that a legislative measure should be passed to strengthen the DARAB and to address current problems hampering its performance. PPI also recommends that the deliberation of cases be conducted by divisions instead of *en banc*, as is the current practice. It should be noted, however, that DARAB members must sit *en banc* during cases of *certiorari* or review so as to ensure their impartiality in the hearing of the said cases.

Status

A Public Hearing was conducted on 21 September 2005. The bill is pending in the Committee on Government Reorganization as of 5 June 2005.

**HB 2532, AN ACT PROVIDING FOR THE SECURITY OF TENURE OF FARMERS AND OTHER PURPOSES,  
Cong. Rafael V. Mariano**

Sallient Points	Position
<p><b>Section 4 (General Provisions)</b> of the bill provides that “land rights of farmers refers to provision of mandatory rights whereby farmers can have access to ownership or management of the land they actually and directly cultivate and other production resources. To achieve this, land rights of farmers are hereby given a legislative mantle. Through these provisions, the farmers’ rights to participate in the charting of their political, economic, social and cultural development are made inviolable with respect to land.”</p> <p><b>Section 5 (Land Rights of Farmers)</b> of the bill provides that farmers as defined in this Act shall have the right to:</p> <p>(a) Maintain the land they own free from interference of whatever nature and kind subject to existing laws;</p> <p>(b) Own the lands enumerated under Section 6 (Scope) hereof, whether by grant, award, redistribution or any similar act;</p> <p>(c) Plant genetic resources including but not limited to:</p> <p style="padding-left: 20px;">(i) Save, use, exchange, share, sell and develop plant genetic resources, including the right to choose the planting materials for their own needs;</p> <p style="padding-left: 20px;">(ii) Share equitable in the benefits arising from the use of these plant genetic resources;</p> <p style="padding-left: 20px;">(iii) Develop sui generis mechanisms to protect their plant genetic resources and traditional knowledge from misappropriation and unfair monopolization;</p> <p>(d) Collectively own the seeds that they conserve, develop and use including the right to preserve traditional farming knowledge and systems;</p> <p>(e) Free speech, press, association and assembly, and seek redress of grievances on matters affecting their land rights. For this purpose, Batasang Pambansa Blg. 880 is not applicable.</p> <p><b>Section 6 (Scope)</b> of the bill provides that “land rights of farmers shall cover all lands, regardless of tenurial arrangement and commodity produced.”</p>	<p>While CSI is generally supportive of HB 2532 or the proposed Farmers’ Land Rights Act, some concepts should first be clearly defined to prevent possible conflicts with other existing laws pertaining to the concept of right to land.</p> <p>CSI believes that the right to land is an inalienable right that is essential in the realization of human dignity for millions of Filipino farmers. It is an economic right that is inseparable from other human rights including the right to life, food, health and means of subsistence.</p> <p>Various provisions under the 1987 Philippine Constitution indicate that it guarantees the farmers’ right to land. For instance, Article II, Section 21 of the 1987 Constitution provides that “the State shall promote comprehensive rural development and agrarian reform.” Article XII, Section 1 of the 1987 Constitution also provides that “the State shall promote industrialization and full employment based on sound agricultural development and agrarian reform.” At the same time, Article XIII, Section 4 of the 1987 Constitution provides that “the State shall, by law, undertake an agrarian reform program... the State shall encourage and undertake the just distribution of all agricultural lands... subject to the payment of just compensation.” It is recommended that these pertinent Constitutional provisions form part of the declaration of principles of HB 2532.</p> <p>Another significant aspect of the right to land that needs to be addressed is the distinction between various types of ownership. Under a Torrens System of individual and private land ownership, the legal basis for farmers’ right to land is Republic Act (RA) No. 6657 or the Comprehensive Agrarian Reform Law (CARL) of 1988. On the other hand, the small farmers’ right to land where ancestral domain claims since time immemoriality are recognized by the State are legally governed by Republic Act (RA) No. 8371 or the Indigenous Peoples Rights Act (IPRA) of 1997. These are two distinct modes of land ownership that should be considered in the process of providing a legal mantle to the concept of the right to land.</p> <p>Section 5, Letter a of HB 2532 provides that “(Farmers as defined in this Act shall have the right to:) maintain the land they own free from interference of whatever nature and kind subject to existing laws.” Weaknesses and loopholes under existing land laws, such as some non-land transfer provisions under RA 6657, are precisely what needs to be reviewed in hopes of strengthening the farmers’ right to land. For instance, the impact of stock distribution option, voluntary land transfer-direct payment scheme, and leaseback schemes should be reviewed since various cases (e.g., Hacienda Luisita, corporative scheme in the Cojuangco landholdings, various leaseback arrangements in Mindanao) reveal that ARBs were shortchanged from the supposed benefits from the agrarian reform program due to the implementation of such non-land transfer schemes.</p> <p>Various issues regarding the issue of land use concern should also be addressed under HB 2532. One of which is the misuse of Department of Justice (DOJ) Opinion No. 44. DOJ Opinion 44 clearly states that only lands which have been classified as residential, commercial, and industrial prior to June 10, 1988 no longer need any conversion clearance. However, some landowners were able to obtain antedated reclassification resolutions from municipalities. It is difficult to determine which resolutions are antedated because of the lack of clear land use policies at the city and municipal level. At the same time, DOJ Opinion 44 is being invoked even for open spaces, lands with deferred land use, and pasturelands, which is contrary to its provisions.</p> <p>CSI recommends the inclusion of a provision in HB 2532 to conduct a systematic review of DOJ Opinion 44 implementation and its impact on the agrarian reform program. Indiscriminate use of DOJ Opinion 44 as the legal bases for land use conversion should be prevented. At the same time, the reclassification and conversion of open spaces, lands with deferred land use, and pasturelands should not be decided based on DOJ Opinion 44.</p> <p>Another issue related to land use con-</p>

version that needs to be addressed by HB 2532 is the government's attempt to simplify and deregulate land use conversion procedures. For instance, Housing and Land Use Regulatory Board (HLURB) Resolution No. 748, which eliminates the need for applicants to secure DAR clearances in converting agricultural lands to residential purposes is raising the spectre of massive land use conversion. The resolution undermines the DAR's authority to approve land use conversion applications. Moreover, Executive Order (EO) No. 45, which simplifies requirements for processing permits and licenses for housing projects, is being used to relax the rules on land use conversion. CSI recommends that a provision should be added under HB 2532 to reiterate the sole authority of the DAR in approving land use conversion applications as provided under RA 6657. Another provision should also be added under HB

2532, which calls for the review of policies that may cause massive land use conversion by the DAR and by concerned sectors before such policies can be implemented. Ultimately, CSI recommends that the farmers' right to land should be given the highest consideration insofar as the issue of land use conversion is concerned.

Lastly, CSI recommends that HB 2532 should include Section 6 (Retention Limits), 23 (Distribution Limit), 25 (Award Ceilings for Beneficiaries), and 27 (Transferability of Awarded Lands) of RA 6657 in its governing policies. These provisions implicitly pertain to the promotion of small farm agriculture, transition considerations in land distribution and the redistributive nature of agrarian reform. By including such governing provisions to HB 2532, the farmers' right to land will be strengthened and will be clearly defined.

**Status**

A Public Hearing was conducted on 26 January 2005. Technical Working Group (TWG) meetings were then conducted on 23 and 26 May 2005.

**Bill Number, Title, Author/s**

**HB 2591, AN ACT PROVIDING FOR THE RIGHTS OF FARMERS TO LAND AND FOR OTHER PURPOSES,  
Cong. Rafael V. Mariano and Cong. Crispin B. Beltran**

**Salient Points**

**Position**

Section 3 (Security of Tenure of Farmers) of the bill provides that "the tenure of potential, qualified, and awarded farmer-beneficiaries of the agrarian reform program shall be secured and they shall not be removed, ejected, ousted, excluded or harassed from their farmholding unless directed by a final decision or order of the court."

Section 4 (Preliminary Determination of the Case) of the bill provides that "No court, tribunal, or prosecutor in the Philippines, shall take cognizance of any ejectment case or any other case designed to remove, eject, oust, exclude, or harass potential, qualified and awarded farmer-beneficiaries of the agrarian reform program, unless certified by the Secretary of the Department of Agrarian Reform (DAR) as a proper case for trial or hearing by a court or judge or other officer of competent jurisdiction and, if any such case is filed,

the case shall be referred to the Secretary of the DAR for a preliminary determination if the case is an agrarian matter, dispute or controversy as defined under RA 6657, as amended. If the Secretary of the DAR finds that the case is a proper case for the court or judge or other hearing officer to hear, he/she shall so certify and such court, judge or other hearing officers may assume jurisdiction over the dispute or controversy."

"The preliminary determination, if the case, dispute or controversy is an agrarian matter of the Secretary of the DAR is final."

"If the case is certified as a proper case for trial, said certification is not binding upon the court or judge or hearing officer. Said court or judge or hearing officer may, after due hearing, conform."

With respect to HB 2591, noted under the whereas clauses of HR 204 are existing provisions under RA 6657 (e.g., Sections 50, 55, and 68), policy remedies (e.g., SC Administrative Circular No. 29-2002, OCA Administrative Circular 38-2002, OCA Administrative Circular 79-2003, and OCA Administrative Circular 23-2004), and recent Supreme Court decisions concerning harassment cases being filed by some former landowners against the ARBs that may already suffice in resolving the issue concerning the need for the said legislative measure.

In addition, CSI in coordination with the Alyansa ng mga Maailit na Magbubukid at Mangingisda (AMMM) and the DAR recently came up with DAR Memorandum Circular (MC) No. 10 series of 2004 or the "Clarificatory Guidelines on Non-Acceptance of Application for Exemption, Exclusion, Protest, Opposi-

tion or Petition for Lifting of CARP Coverage." MC 10 seeks to clarify that only the applications for exemption, exclusion, protests, oppositions or petitions filed within the 60-day period from receipt of notice of coverage and supported by the foregoing documentary requirements shall be accepted. Otherwise, applications and oppositions filed after the 60-day period shall not be acknowledged and received. This is to prevent the indiscriminate cancellation of EPs and CLOAs and to provide specific limits on the period for raising opposition against land distribution.

<p><b>Section 5 (Appearance and Representation)</b> of the bill provides that “potential, qualified and awarded farmer-beneficiaries of the agrarian reform program and responsible farmer leaders shall be allowed to represent themselves, their fellow farmers, or their organizations in any proceedings before the court or judge or hearing officer before the referral of the case to the Secretary of the DAR and during the hearings that may be conducted by said court or judge or hearing officer for the confirmation, reversal or modification of the said preliminary determination. Provided, however, that when there are two or more representatives for any individual or group, the representatives should choose only one among themselves to represent such party or group before any proceedings.”</p>	<p>“Law student and law graduates but not yet members of the Bar, shall be allowed to represent potential, qualified and awarded farmer-beneficiaries of the agrarian reform program before the said proceedings. Provided, however, that they are equipped with authority from the farmer-beneficiaries.”</p> <p><b>Section 6 (Pauper Litigant)</b> of the bill provides that “potential, qualified and awarded farmer-beneficiaries of the agrarian reform program shall be entitled to the rights and privileges of a pauper litigant under existing laws without further proof thereof. He shall continue to enjoy such status as a pauper litigant in all levels of the proceedings until the case, if any, is terminated.”</p>
<b>Status</b>	
<p>A Public Hearing was conducted on 26 January 2005. Technical Working Group (TWG) meetings were then conducted on 23 and 26 May 2005.</p>	

<b>Bill Number, Title, Athor/s</b>		
<p><b>HR 204, A RESOLUTION DIRECTING THE HOUSE COMMITTEE ON AGRARIAN REFORM TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON RAMPANT AND UNLAWFUL FILING OF AGRARIAN RELATED CASES IN THE REGULAR COURTS, PARTICULARLY THE ISSUANCE OF INJUNCTION AND TEMPORARY RESTRAINING ORDERS BY THESE COURTS ON THE SAME CASES, ITS EFFECTS ON THE PLIGHT OF THE FARMER BENEFICIARIES AND THE POLICIES AND RESPONSES OF THE DEPARTMENT OF AGRARIAN REFORM IN RELATION TO THIS ISSUE,</b>                      Cong. Ana Theresa Hontiveros-Baraquel, Marlo “Mayong” Joyo Aguja, and Loretta Ann P. Rosales</p>		
<b>Sallent Points</b>	<b>Position</b>	
<p>Whereas, there is a need to ascertain the number of cases, number of hectares and affected farmer-beneficiaries where landowners contest the acquisition and distribution process being implemented by the DAR by filing petitions and complaints in regular courts nationwide, where injunctions and TROs are issued, in order to obstruct, impede or render ineffective the said processes;</p> <p>In view thereof, be it resolved, as it is hereby resolved that the House Committee on Agrarian Reform be directed to conduct and inquiry in aid of legislation on the impact of the rampant and illegal filing of agrarian-related cases in the regular courts, particularly the issuance of injunction and TROs by these courts on the implementation of the agrarian reform, its effects on the plight of the farmer-beneficiaries and the policies and responses of the DAR in relation to these issues.</p>	<p>CSI believes that such an inquiry is very timely because of the reported non-implementation by the Department of Agrarian Reform (DAR) of DAR Memorandum Circular (MC) No. 6 series of 2004, particularly in some CARP-covered landholdings in Negros Occidental. The said MC affirms Section 55 (No Restraining Order or Preliminary Injunction) of Republic Act (RA) No. 6657 or the Comprehensive Agrarian Reform Law (CARL) of 1988, which provides that “no court in the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the PARC or any of its duly authorized or designated agencies in any case, dispute or controversy arising from, necessary to, or in connection with the application, implementation, enforcement, or interpretation of this Act and other pertinent laws on agrarian reform.”</p> <p>CSI, in close coordination with the Task Force Mapalad (TFM), the Alyansa ng mga Maliliit na Maghubukid at Mangingisda (AMMM), and the Agrarian Reform Coalition (AR Coalition), has been very critical of the Department of Agrarian Reform (DAR), particularly DAR Secretary Rene Villa, because of his continued insistence on suspending agrarian reform implementation pending the resolution of agrarian cases filed by some big landowners in the lower courts. While there are very clear provisions on CARP about the immunity of the DAR from interference in the implementation of agrarian reform as well as the resolution of agrarian cases, and there are also previous rulings, which state that Philippine local courts have no jurisdiction over agrarian-related cases or disputes, and even the Supreme Court (SC) has already decided on this matter, Secretary Villa has chosen to ignore all these. His hesitance to implement the agrarian reform program and to install the agrarian reform beneficiaries (ARBs) to their awarded landholdings has resulted to major setbacks in agrarian reform implementation as killings of ARBs in Negros continues to escalate.</p>	

**F E A T U R E S**

CSI recommends to the Honorable House Committee on Agrarian Reform to issue a resolution directing the Department of Land Reform (DLR) and other concerned CARP implementing agencies (CIAs) to implement DAR MC 6 series of 2004, fast-track the implementation of the agrarian reform program and expedite the installation of the uninstalled farmer-beneficiaries in Negros Occidental as well as in Negros Oriental.

CSI also recommends the Honorable Committee to investigate other areas (e.g., the 410-hectare Polo Plantation in Brgy. Polo, Tanjay City, Negros Oriental where the CARP coverage was recently questioned by the Special 20<sup>th</sup> Division of the Court of Appeals) where similar problems and delays in agrarian reform implementation exist.

**Status**

A Public Hearing was conducted on 26 January 2005. Technical Working Group (TWG) meetings were then conducted on 23 and 26 May 2005.

**Bill Number, Title, Author/s**

**HR 455, RESOLUTION DIRECTING THE HOUSE COMMITTEE ON AGRARIAN REFORM TO INVESTIGATE, IN AID OF LEGISLATION, THE STATUS OF THE P38 BILLION MARCOS ILL-GOTTEN WEALTH AND ITS ALLEGED APPROPRIATION FOR PURPOSES OTHER THAN AGRARIAN REFORM IMPLEMENTATION AND THE INDEMNIFICATION OF HUMAN RIGHTS VICTIMS UNDER MARTIAL LAW,**

Cong. Lorenzo R. Tañada III, Ana Theresa H. Baraquel, Mario J. Aguja, Loretta Ann P. Rosales, Del R. de Guzman, Renato B. Magtubo, Joel Emmanuel J. Villanueva, and Edcel C. Lagman

**Salient Points**

**Position**

Whereas, the PARC later drafted PARC Resolution No. 2004 authorizing the release of P544 million from the ARF for the DA's hybrid rice program, ostensibly because the majority of the rice farmers participating in the hybrid rice technology were ARBs;

Whereas, Ka Jimmy Tadeo, a farmer sector representative of the PARC opposed the resolution and called for an en banc meeting to discuss the proposed resolution;

Whereas, Mr. Tadeo together with the Alyansa ng mga Maliliit na Magbubukid at Mangingisda (AMMM) also reiter-

ated the farmer sector's clamor for the funds to be used for land acquisition and distribution;

Now therefore, be it resolved, as it is hereby resolved, to direct the Committee on Agrarian Reform to investigate, in aid of legislation, the status of the P38 billion Marcos ill-gotten wealth and its alleged appropriation for purposes other than agrarian reform implementation and the indemnification of human rights victims under Martial Law.

CSI supports the resolution insofar as it seeks to call on Congress, particularly the House Committee on Agrarian Reform, to conduct an inquiry in aid of legislation on the status of the P38 billion Marcos ill-gotten wealth and its alleged misuse for non-agrarian reform purposes.

CSI, together with other small farmer and fisherfolk organizations, holds the position that the recovered funds should be used judiciously to implement to the full extent of the law the agrarian reform program. In particular, the funds should be used to finance the acquisition and distribution of highly contested private

agricultural lands, particularly sugarcane and coconut lands.

CSI is also open to the passage of a law to allocate portion of the funds to victim of human rights violations during Martial Law.

CSI, however, questions the alleged misuse of the funds for non-agrarian reform purposes, particularly for the government's hybrid rice program. As it is, agrarian reform implementation has been hampered by huge budgetary cuts and the diversion of the funds will only serve to exacerbate the situation.

**Status**

The bill is pending in the Committee on Agrarian Reform as of 5 June 2006.

# Senate Bills

Bill Number, Title, Athor/s

**SB 10, AN ACT ENSURING SECURITY OF TENURE FOR AGRARIAN REFORM BENEFICIARIES OVER LANDS AWARDED TO THEM UNDER REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW OF 1988), PROVIDING GUIDELINES FOR THE CANCELLATION OF EMANCIPATION PATENTS AND CERTIFICATES OF LAND OWNERSHIP AWARDS ON THE GROUNDS OF EXEMPTION AND EXCLUSION, RETENTION OR NON-QUALIFICATION, DEFINING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES,  
Sen. Juan Flavler**

**Salient Points**

**Position**

Section 3. (Indefeasibility of Emancipation Patents and Certificates of Land Ownership Awards) EPs or CLOAs are titles under the operation of the Torrens System, as such, they shall enjoy the same security afforded to all titles under the Torrens system of Registration; Provided, however, that:

1) The former landowners and other qualified beneficiaries, if any, have been duly notified by the DAR within fifteen (15) days before the Registry of Deeds has registered an EP or CLOA in accordance with these rules:

a. The notice shall be served by handing a copy thereof to the landowners in person, or if he refuses to receive and sign for it, by tendering it to him;

b. If, for justifiable causes, the notice can not be served to the former landowner in person, service may be effected (1) by leaving the copy of the notice at the former landowner's residence with some person of suitable age and discretion residing therein; (2) by leaving the copy at the landowner's office or regular place of business to a competent person in charge thereof;

c. Should there be other qualified ben-

eficiaries as defined in Section 22 of RA 6657 and the provisions of PD 27, the service of notice shall be effected in accordance with any of the two (2) immediately preceding paragraphs whichever is applicable;

d. In all cases, a copy of the notice shall be posted in a conspicuous place in the city or municipal building and barangay hall of the place where the property is located;

2) The former landowners have been paid just compensation in accordance with agrarian reform laws;

Provided, further, that this provision on notification of landowner's and other qualified beneficiaries, if any, shall apply prospectively; and Provided, finally, that no tiller of the soils or former landowner has filed a claim within one (1) year from notice of issuance of such titles.

For this purpose, farmer-beneficiaries who received EPs and CLOAs pursuant to the Comprehensive Agrarian Reform Law are hereby deemed innocent purchasers for value and are entitled to the rights and protection as such persons under existing laws.

CSI supports SB 10 insofar as it seeks to ensure the security of tenure of the ARBs over the lands awarded to them under CARP by providing a clear set of guidelines for the cancellation of EPs and CLOAs on the grounds of exemption and exclusion, and retention or non-qualification.

The fundamental requisite in ensuring the security of tenure of the ARBs is the recognition of EPs and CLOAs as titles under the Torrens System of private property ownership, which is duly provided under SB 10.

Providing a specific and time-bound prescriptive period for EP or CLOA cancellation proceedings on the grounds of exemption and retention is also essential in ensuring the ARBs' security of tenure. As provided under SB 10, former landowners or other qualified beneficiaries may petition for EP or CLOA cancellation proceedings within one (1) year from the issuance of the said EP or CLOA.

In Negros Oriental and Negros Occidental, where large tracts of highly contested private agricultural lands are located, many ARBs have feel victims to EP and CLOA decisions because of the

lack of a prescriptive period in allowing cancellation proceedings. This major concern among the ARBs thus merit the passage of SB 10 to ensure their security of tenure over their awarded lands.

**Status**

The bill is pending in the Committee on Agrarian Reform as of 5 June 2006

Bill Number, Title, Athor/s

**SB 20, AN ACT AMENDING PRESIDENTIAL DECREE NO. 717, OTHERWISE KNOWN AS THE AGRI-AGRA LAW, TO MAXIMIZE THE USAGE OF THE AGRI-AGRA FUND, WITH STRICT EMPHASIS ON RURAL CREDIT FOCUSING ON SMALL FARMERS, FISHERMEN AND ENTERPRISES WITH CAPITALIZATION NOT EXCEEDING 500,000 PESOS,  
Sen. Juan Flavler**

**Salient Points**

**Position**

Section 4. Coverage and Allocation of Funds

(a) It shall be mandatory for all banks to apportion at least twenty-five percent

CSI supports SB 20 insofar as it seeks to re-direct the 25 percent loanable

funds under the Agri-Agra Law in favor of the small farmers and the agrarian

<p>(25%) of their loanable funds for agriculture/agrarian reform beneficiaries.</p> <p>(b) At least seventy-five percent (75%) of this Agri-Agra Fund shall be clearly set aside and strictly utilized for rural credit. The Land Bank of the Philippines, the Philippine National Bank, and the Development Bank of the Philippines shall act as the lead lending and collection conduits of financial institutions with special attention to commercial banks.</p> <p>(c) The use of the remaining twenty-five percent (25%) of the Agri-Agra Funds shall be left to the discretion of the financial institutions involved.</p> <p>(d) Financial institutions shall no longer be allowed to use the Agri-Agra Funds to buy government securities. (In effect, Section 4 (a) of Presidential Decree No. 717 is hereby repealed.)</p> <p>(e) Enterprises and cooperative organizations qualified to avail of the Agri-Agra Funds are those with capitalization not exceeding five hundred thousand pesos (P500,000.00).</p> <p><b>Section 5. Network</b></p> <p>(a) The Central Bank shall immediately allow the LBP, the DBP and the PNB to increase their branches in the countryside to strengthen their roles as the main conduits of the Agri-Agra Funds.</p> <p>(b) The Central Bank shall also encourage the establishment of new rural banks to further facilitate the easy dis-</p>	<p>persal of the Agri-Agra Funds.</p> <p>(c) Rural banks shall be allowed to give accreditations to existing informal lenders. These informal money lenders can now integrate into the formal banking system with the following incentives:</p> <p>(1) These lenders shall have easy access to credit supply from the banks they affiliate with;</p> <p>(2) The banks involved shall shoulder part of the lenders' collection losses; and</p> <p>(3) As agents of rural banks, the money lenders shall be entitled to commissions that will be determined by the Central Bank.</p> <p>(d) In exchange for the above incentives, the accredited money lenders shall charge the same lending rate as the rate of the rural banks, which accredited them.</p> <p><b>Section 6. Drawdown of Funds</b></p> <p>(a) In cognizance of the size of the whole Agri-Agra Funds, the full drawdown of the Agri-Agra Fund from the financial institutions shall be done gradually within a period of five (5) years from the approval of this Act.</p> <p>(b) The LBP, the DBP, and the PNB shall formulate a program that will allow the countryside financial establishments to adequately disperse the Agri-Agra Fund within the time limit set by the law.</p>	<p>reform beneficiaries. Likewise, the bill seeks to provide more jobs and livelihood opportunities to rural communities by making credit available in the countryside by providing significant amendments to PD 717 or the Agri-Agra Law.</p> <p>Making the compliance to the Agri-Agra Law mandatory, particularly in directing all banks to allocate 25 percent of their total loanable funds to small farmers and ARBs is an essential step in ensuring the financing of productive undertaking by the small agricultural producers.</p> <p>There is also wisdom in making government financial institutions, such as the Land Bank and the DBP, as the main conduits for the delivery of the Agri-Agra Funds to its intended borrowers. This is because compared to private commercial banks, GFIs have more knowledge of the rural finance system as well as physical branches and personnel to address the needs of the small agricultural producers. However, the bill should also seriously consider the need to provide additional bank personnel and capital requirements in areas that have such requirements.</p> <p>CSI lauds SB 20's provision removing government securities as an alternative mode of compliance to the Agri-Agra Law. These alternative modes of compliance have been the biggest loophole that resulted to the failure to implement PD 717. CSI, however, recommends that all types of alternative modes of compliance, should be repealed.</p> <p>At the same time, CSI recommends that credit requirements, like interest rates, collateral requirements and tracks records, should also be reviewed and taken into consideration in the passage of this bill. As it is, small agricultural producers are unable to repay loans at are not lower than market level interest rates, that require collateral, and that require a substantial duration of track record because of their poor economic conditions.</p> <p>CSI proposes that there should be negotiated and below market considerations in providing the small agricultural producers production capital under the Agri-Agra Law.</p>
<b>Status</b>		
The bill is pending in the Committee on Agrarian Reform as of 5 June 2006		

Bill Number, Title, Author/s		
<p><b>SB 238, AN ACT PROVIDING AMPLE OPPORTUNITY TO ALLOW LANDOWNERS AND TENANTS TO ENTER INTO VOLUNTARY LAND TRANSFER/DIRECT PAYMENT SCHEME AND AMENDING FOR THE PURPOSE REPUBLIC ACT NUMBER 6657 OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AMENDED, Sen. Segio Osmeña III</b></p>		
Salient Points	Position	
<p>SECTION 1. Section 20 of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, as amended, is hereby amended to read as follows:</p> <p>Section 20. Voluntary Land Transfer – Landowners of agricultural lands sub-</p>	<p>ject to acquisition under this Act may enter into a voluntary agreement for direct transfer of their lands to qualified beneficiaries subject to the following guidelines:</p> <p>(a) All notices petitions for voluntary land transfer must be submitted to the</p> <p>CSI vehemently opposes SB 238, which purportedly seeks to provide ample opportunity to allow landowners and tenants to enter into Voluntary Land Transfer/Direct Payment Scheme, amending for the purpose Republic Act (RA) No. 6657 or the Comprehensive Agrarian Reform Law (CARL) of 1988.</p> <p>Section 20 (a) of the bill provides that, "All notices petitions for voluntary land transfer must be submitted to the DAR within the first year of the implementation of the CARP..." If former landowners are truly sincere in entering into a VLT agreement with the ARBs, they would have done so during the early stages of</p>	

<p>DAR within the first year of the implementation of the CARP and should be acted upon within thirty (30) days upon receipt thereof. Negotiations between the landowners and qualified beneficiaries covering any voluntary land transfer which remain unresolved after one (1) year from submission of petitions shall not be recognized and such land shall instead be acquired by the government and transferred pursuant to this Act;</p> <p>(b) The terms and conditions of such transfer shall not be less favorable to the transferee than those of the government's standing offer to purchase from the landowner and to resell to the beneficiaries, if such offers have been made and are fully known to both parties;</p> <p>(c) THE AGRARIAN REFORM BENEFICIARY AGREES TO THE AMOUNT AND THE TERMS OF PAYMENT;</p>	<p>(d) THE DAR SHALL ACT AS MEDIATOR IN CASES OF DISAGREEMENT BETWEEN THE LANDOWNER AND THE FARMER AND/OR FARMER BENEFICIARY;</p> <p>(e) The voluntary agreement shall include sanctions for non-compliance by either party and shall be duly recorded and its implementation monitored by the DAR;</p> <p>(f) TO ENSURE THE VIABILITY OF THIS SCHEME, THE LAND BANK OF THE PHILIPPINES (LBP) SHALL EXTEND TO THE FARMER BENEFICIARIES FINANCIAL SUPPORT FOR PRODUCTION, TECHNOLOGY TRANSFER AND MARKETING FACILITIES AND/OR ACTIVITIES; AND</p> <p>(g) THE FARMER AND/OR FARMER BENEFICIARY SHALL BE ELIGIBLE TO BORROW FROM THE LBP AN AMOUNT EQUAL TO EIGHTY-FIVE PERCENT (85%) OF THE SELLING PRICE OF THE LAND THAT THEY HAVE ACQUIRED.</p>	<p>CARP implementation. At this stage of CARP implementation, government needs to compulsory acquire the remaining private agricultural lands covered under CARP precisely because of the landowners' resistance against the program.</p> <p>The VLT/DPS scheme is merely a way for the big landowners to further ensure their hold over their lands since there are no clear guarantees once the big landowners are pitted against the ARBs in a negotiating table. Moreover, VLT/DPS is merely a market-assisted land reform formula that is being espoused by the World Bank. It is widely known that this market-assisted land reform approach has been strongly opposed by various small farmer organizations and agrarian reform advocates in the country.</p> <p>Instead of passing SB 238 into law, government should instead focus on implementing CARP to the full extent of the law, particularly by fast-tracking land acquisition and distribution, the installation of the ARBs to their awarded lands, and the provision of the required support services, such as irrigation facilities, farm-to-market roads, post-harvest facilities, and rural credit, to the ARBs to raise agricultural productivity and sustain rural incomes.</p>
<b>Status</b>		
The bill is pending in the Committee on Agrarian Reform as of 5 June 2006		

Bill Number, Title, Author/s		
SB 239, AN ACT CREATING THE NATIONAL AGRARIAN REFORM ADJUDICATION COMMISSION, DEFINING ITS POWERS AND FUNCTIONS, AND APPROPRIATING FUNDS THEREFOR, Sen. Sergio Osmeña III		
Salient Points	Position	
<p>Section 1 (The National Agrarian Reform Adjudication Commission: Creation, Composition and Jurisdiction) of the bill provides that "There shall be created a National Agrarian Reform Adjudication Commission, hereinafter known as the Commission, to be composed of a Chairman and fourteen (11) members. There shall be established a provincial office of the Commission in each province of the country, to be headed by a Provincial Agrarian Reform Adjudicator (PARAD). The Commission shall be attached to the Department of Agrarian Reform (DAR) for program and policy coordination only."</p> <p>"The Commission may sit en banc or in five (4) divisions, each composed of three (3) members."</p> <p>"The Commission shall exercise its adjudicatory and all other powers, functions, and duties, through its divisions. The first, second and third divisions shall handle cases coming from Luzon and the fourth and fifth divisions shall handle cases from Visayas and Mindanao, respectively. The divisions shall have exclusive appellate jurisdiction over cases decided by the PARADS</p>	<p>within their respective territorial jurisdictions."</p> <p>"The Chairman shall be the Presiding Commissioner of the first division and shall designate the presiding commissioners of the other divisions. In case of the effective absence or incapacity of the Chairman, the Presiding Commissioner of the second division shall be the acting chairman."</p>	<p><u>NARAC will only add an unnecessary layer in the bureaucracy.</u></p> <p>Senate Bill No. 239 provides for the creation of an independent body, which is the NARAC. Centro Saka sees that there is no need to create another body as provided in SB 239, as this will only add an unnecessary layer in the bureaucracy and further constrict government's already limited resources. At the same time, since the creation of NARAC would require a period of adjustment and transition to effectively function, this may contribute to the further delay of the resolution of case backlogs. As it is, the DARAB has already registered an increasing number of case resolutions in recent time. The wiping out of the case backlogs may already be addressed by increasing the number of full-time members in the DARAB, improving the procedure in the deliberation of appealed cases, and by augmenting its fiscal and administrative resources. <u>The alleged lack of impartiality of the DARAB lacks legal and factual basis.</u></p> <p>One of the main justifications for the passage of the SB 239 is the purported lack of impartiality of the DARAB given</p>
		<p>its functional relationship with the DAR and the nature of functions of its members. This argument lacks any legal or factual basis since the DARAB has no jurisdiction to review or modify the decisions of the Office of the Secretary and vice versa.</p> <p>Under the present set-up, the DAR has policy-making, administrative and quasi-judicial functions. These functions are clearly delineated and assigned to the different units and entities within the department. All agrarian disputes, subject to certain exceptions, are under the jurisdiction of the DARAB. The Office of the Secretary, on the other hand, resolves administrative cases. Also, members of the DARAB may inhibit themselves in the hearing and resolution of cases if they have advised farmer-litigants and former landowners on specific agrarian cases. Thus, there would be no occasion for the Chair and the four (4) part-time members of the DARAB who also occupy administrative functions to act in conflicting capacities.</p> <p>Instead of passing SB 239 into law, Centro Saka recommends that a legislative measure should be passed to</p>



## F E A T U R E S

strengthen the DARAB and to address current problems hampering its performance. CSI also recommends that the deliberation of cases be conducted by divisions instead of *en banc*, as is the

current practice. It should be noted, however, that DARAB members must sit *en banc* during cases of *certiorari* for review so as to ensure their impartiality in the hearing of the said cases.

### Status

The bill is pending in the Committee on Agrarian Reform as of 5 June 2006

### Bill Number, Title, Author/s

**SB 1583, AN ACT REQUIRING THE DEPARTMENT OF AGRARIAN REFORM AND THE DEPARTMENT OF AGRICULTURE TO SUBMIT AN ANNUAL REPORT TO CONGRESS ON STATISTICS RELATING TO THE CONVERSION OF AGRICULTURAL LAND TO NON-AGRICULTURAL USES INCLUDING A REVIEW OF EXISTING POLICIES AND PROCEDURES, Sen. Miriam Defensor Santiago**

#### Salient Points

#### Position

**SECTION 4. *Development of Criteria to Identify Effects of Government Programs on Conversion of Agricultural Land to Non-Agricultural Uses.*** – The Department of Agrarian Reform and the Department of Agriculture, in cooperation with other departments, agencies and local government units, shall develop criteria for identifying the effects of government programs on the conversion of agricultural land to non-agricultural uses.

**SECTION 5. *Use of Criteria.*** – Departments, agencies, and local government units shall use the criteria established under the preceding paragraph to identify and take into account the adverse effects of government programs and policies on the preservation of agricultural land; consider alternative actions, as appropriate, that could lessen such adverse effects; and assure that programs and policies of the government at the national level for the protection of agricultural land are, to the extent practicable, compatible with development plans of local government units.

**SECTION 6. *Availability of Restorative Information.*** – The Department of Agrarian Reform and the Department of Agriculture shall make available to other department and agencies of the government, local government units, individuals, and organizations information useful in restoring, maintaining, and improving the quantity and quality of agricultural land.

**SECTION 7. *Review of Existing Policies and Procedures.*** – The Department of Agrarian Reform and the Department of Agriculture, in coordination with other departments and agencies of the government and local government units, shall review current provisions of law,

administrative rules and regulations, policies and procedures to determine whether any provision prevents full compliance with the provisions of this Act. Whenever necessary, they shall develop proposals for action to bring government programs, policies and administrative activities into conformity with the purpose of this Act.

**SECTION 8. *Technical Assistance.*** – The Secretary of Agrarian Reform and the Secretary of Agriculture and other department secretaries, whenever appropriate, shall provide technical assistance to local government units which intend to develop programs and policies to limit the conversion of productive agricultural land to non-agricultural uses.

**SECTION 9. *Agricultural Land Resource Information.*** -

**SECTION 10. *Reporting Requirements.*** – At the beginning of each calendar year, the Secretary of Agrarian Reform and the Secretary of Agriculture shall report to the Committees on Agrarian Reform, Agriculture and Food, Economic Affairs, Constitutional Amendments, Revision of Codes and Laws, Environment, Local Government, Natural Resources, and Rural Development of the House of Representatives, on the progress made in implementing the provisions of this Act. The report shall include information on -

(1) the effects, if any, of government programs and administrative activities with respect to the protection of agricultural land; and

(2) the results of the reviews on existing policies and procedures required under Section 7 of this Act.

CSI supports SB 1538 insofar as it seeks to direct the DAR and the DA to submit annual reports on the status of land use conversion as well as a review of existing land use conversion programs and policies.

It is widely known that land use conversion has been one of the main stumbling blocks in the implementation of the agrarian reform program. In previous years, vast tracts of prime agricultural lands, particularly in the CALABARZON are, have been converted to residential, industrial, and commercial uses because of the lack of clear policies as well as political will from the government to protect the remaining prime agricultural lands.

It is through the passage of this bill that unabated and illegal land use conversion can again be monitored and policies and programs can be reviewed to prevent more agricultural lands from being converted to non-agricultural purposes in the future.

CSI recommends that government should initially review how Department of Justice (DOJ) Opinion 44 was used to increase land use conversion activities in the country. DOJ Opinion 44 clearly states that only lands which have been classified as residential, commercial, and industrial prior to June 10, 1988 no longer need any conversion clearance. However, some landowners were able to obtain antedated reclassification resolutions from municipalities. It is difficult to determine which resolutions are antedated because of the lack of clear land use policies at the city and municipal level. At the same time, DOJ Opinion 44 is being invoked even for open spaces, lands with deferred land use, and pasturelands, which is contrary to its provisions.

Indiscriminate use of DOJ Opinion 44 as the legal bases for land use conversion should be prevented. At the same time, the reclassification and conversion of open spaces, lands with deferred land use, and pasturelands should not be decided based on DOJ Opinion 44.

Another issue related to land use conversion that needs to be addressed by SB 1538 is the government's attempt to simplify and deregulate land use conversion procedures. For instance, Housing and Land Use Regulatory Board (HLURB) Resolution No. 748, which eliminates the need for applicants to secure DAR clearances in converting agricultural lands to residential purposes is raising the spectre of massive land use conversion. The resolution undermines the DAR's authority to approve land use conversion applications. Moreover, Executive Order (EO) No. 45, which simplifies requirements for processing permits and licenses for housing projects, is being used to relax the rules on land use conversion. CSI maintains that the DAR has the sole authority to approve land use conversion applications as provided under RA 6657.

### Status

The bill is pending in the Committee on Agrarian Reform as of 5 June 2006. 

# PKKK's Provincial Consultations Women on women

Photo by Daryl Leyesa

BY JING P. FRANCISCO

Janelyn P. Francisco is a policy advocacy officer under CSI's Rural Women Center.



*The year 2006 marks the 25<sup>th</sup> anniversary of the enforcement of the United Nations Convention on the Elimination of All Forms of Discrimination (CEDAW) in the Philippines. CEDAW embodies women's civil, political, economic, social, and cultural rights, and further reiterates the state's obligation to fulfill and protect these. In Article 14, CEDAW addresses the existence of discrimination against women and the persisting gender inequality across all sections of society, including those in the rural areas.*

*The Philippine government is scheduled to present the Country Report on the Status of Women to the UN CEDAW. The non-government groups, on the other hand, intend to show the real status of our women through the so-called Shadow Report. The rural women sector aims to contribute to the shadow reporting processes. Despite the enforcement of CEDAW and other institutional mechanisms for women, last year's leg of Rural Women Provincial Consultations showed the extent of marginalization still faced by their sector. The 30 consultations were sponsored primarily by the Pambansang Koalisyon ng Kababaihan sa Kanayunan (PKKK). The following report is an initial contribution illustrating the real status of our women in the countryside. (For copies of the photos, the list of provinces covered by the consultations, and the complete set of tables highlighting the issues raised during the consultation series, e-mail us at centrosaka@yahoo.com. -Daryl Leyesa)*

**D**uring the first National Rural Women Congress in October 2003, the Pambansang Kongreso ng Kababaihan sa Kanayunan (now the Pambansang Koalisyon ng Kababaihan sa Kanayunan) or PKKK was able to identify common issues confronting the rural women. This resulted in the formulation of the National Rural Women Agenda, which is further categorized into different issue clusters, namely (1) Property Rights under Agrarian Reform, (2) Property Rights under Ancestral Domains, (3) Property Rights in Coastal Communities, (4) Access to Adequate Food and Sustainable Agriculture services, and Anti-GMO (Genetically Modified Organisms) cluster, (5) Access to Safe Potable Water, (6) Access to Women-Friendly Sustainable Agri-Fishery Support Services, (7) Gender and Development program and budgeting, (8) Local Sectoral Representation, (9) Reproductive Health and Anti-VAW (Violence Against Women) and (10) Micro-Finance and Livelihood Cluster.

The PKKK later deemed it necessary to verify whether the issues identified during the first rural women congress were indeed commonly shared and expressed by the local commu-

nities. Towards this end, thirty-two provincial consultations were conducted (please see attached list) from June until December. (Rural women from other provinces later indicated their interest in conducting similar consultations.) These consist of 14 consultations in Luzon, 10 in Visayas and eight in Mindanao. An average of thirty participants coming from different municipalities per province attended the endeavor. For each consultation, a core group (composed of NGOs and POs or even from the LGUs) was formed to act as convener or facilitator. The group would be responsible in planning and coordinating the activity with PKKK, inviting participants and guests from government agencies as well as help conduct and document the activities. From this same groups, one organization would volunteer as the lead convener that would also be accountable for the financial liquidation or reporting of the budget released by PKKK for this purpose. These consultations also helped the rural women prepare for their Second National Congress, which was scheduled to be held in October 2005.

The consultations began with an orientation about PKKK (i.e., what is PKKK? the National Agenda, initiatives, member organizations etc.). This was followed by the presentation of program and services by different government agencies and local government units, an open forum and, workshop sessions on the problems/issues confronting rural women in respective provinces. The National Commission on the Role of Filipino Women (NCRFW) were able to attend some of the consultations and presented government's Gender and Development Program (GAD Program) and its implementation of the GAD Budget. These consultations became an opportunity for NCRFW to introduce its office and mandate, especially since the commission was not familiar to local communities.

Issues parallel with the National Agenda were tackled during workshop sessions (please see workshop output). It became apparent that some problems called for special attention. For example, many rural women expressed concern for the environment, particularly the ill effects of mining in communities. There were also participants coming from the informal sector who were campaigning against the proliferation of "ukay-ukay" shops or (bazaars of second hand clothes).

The plethora of recommendations from the workshops were later categorized into the following: awareness raising activities (e.g. IEC on Reproductive Health, Violence Against Women, Women's Rights etc.), capacity building for women (e.g. leadership, livelihood skills training, para-legal etc.), ad-



# n e w s b r i e f s

## Farmers Score US Garment Quota

“Government has no right to trade away the livelihood of small rice farmers in exchange for a US quota on garments!” Centro Saka, a farmer-based non-government organization issued this statement while criticizing government and private sector efforts to secure a US quota on garments by agreeing to open up the grains industry. The US is reportedly seeking the opening up of the grains market in exchange for preferential trading arrangements on garments.

The planned trade off was revealed by the Confederation of Garments Exports of the Philippines’ (CONGEP) George Siy who was reported to have participated in the second high level trade mission to the US last month.

“The garment industry’s desire to get a US quota should not be met at the expense of other commodity sectors, especially one as important as rice”, said Omi Royandoyan, Centro Saka executive director. “Opening up our markets to subsidized rice from the US will displace our local rice producers and undermine

the continued economic viability of domestic rice production.” At present US rice prices are pegged at US\$289.86 per metric ton or roughly PhP15.00 per kilo.

“Government will do well to remember that rice is the single most important crop in the agricultural sector. It accounts for at least 19 percent of the country’s gross value added in agriculture (GVA), and employs at least three million small rice farmers in more than 56 provinces nationwide,” added Royandoyan. Any threat to the rice industry will jeopardize the livelihood of these farmers.

On the other hand, the garments industry, which is the economy’s second largest dollar earner, employs some 400,000 people. Without the agreement, the sector is said to be in danger of losing some 200,000 jobs.

Centro Saka also raised questions regarding the context of the proposed trade off. “Is the proposed trade off part of the deal being cooked up under a future free trade agreement with the US?” asked Royandoyan. “Does this mean that government is starting negotiations with the US for an FTA. If so, then why were vulnerable sectors like agriculture,

especially the rice industry, not consulted in this process? Is it because they are presently being used as pawns to get further concessions in other areas of the economy?” Royandoyan further asked.

## 2006 Coco Output to Rise 3.1%

The United Coconut Associations of the Philippines (UCAP) expects the country’s coconut oil (CNO) production to slightly increase from 1.330 million metric tons (MMT) this year from 1.314 MMT in 2005 due to the predicted rise in copra recovery from which CNO is extracted.

UCAP said the rains brought by the La Niña weather phenomenon will increase coconut harvests. Rainfall is expected to be at almost normal to above-normal levels in most coconut-producing provinces.

Thus, export forecast for CNO in 2006 is seen to rise by 3.1 percent compared to 2006. 🐦

The items in this section were gathered from the following Philippine news dailies: Philippine Daily Inquirer, Philippine Star, Business Mirror, BusinessWorld, Manila Times, Manila Bulletin, Manila Standard Today, and Malaya.



CS photo/abn

vocacy, networking and linkaging in order to access the GAD budget, basic social services and livelihood programs and capability building for women organizations (e.g. organizational development and management, project management etc.).

PKKK, despite its limited resources, was able to sustain the activity because of the invaluable contribution of its member organizations and support institutions. The support of the provincial conveners, the women participants and the openness of the different government agencies and local government units were also instrumental in the success of the endeavor. The experience clearly illustrated what the rural women could achieve when they work together. The challenge for them now is how to sustain efforts so that they may be able to pursue their agenda. 🐦

Ms. Abigail de la Cruz (center) of the National Commission on the Role of Filipino Women (NCRFW) stresses a point during the First Rural Women Provincial Consultation held in Muñoz, Nueva Ecija.

**mad•ness** \ˈmad-nəs\ *n* (14c) **1** : the quality or state of being mad: as **a** :RAGE **b** :INSANITY **c** :extreme folly **d** :ECSTASY,ENTHUSIASM **2** : any of several ailments of animals marked by frenzied behavior ; *specif* :RABIES

The coconut levy is a form of tax imposed by the late President Ferdinand Marcos, purportedly to rehabilitate the ailing coconut industry. Though clearly taken from the pockets of millions of small coconut farmers, the group of San Miguel Corporation (SMC) Chair Eduardo "Danding" Cojuangco has been claiming ownership of the levy fund, now valued at PhP120 billion. Fortunately, the Supreme Court, on two occasions, declared and affirmed the public character of the contested levy fund.



Photograph by Jimmy Domingo

Why the Presidential Commission on Good Government (PCGG) is keen on forging a compromise agreement with Mr. Cojuangco and other parties accused of misusing the funds collected from impoverished coconut farmers is beyond us.

Even more disturbing is PCGG Chair Camilo Sabio heaping praises on the person the commission should be running after. In a television interview on 02 January 2006, Chair Sabio called Mr. Cojuangco a "patriotic Filipino."

Let us know what you think.