

## Private Investments in Agriculture

With low public spending in agriculture and complexity in land governance, private investments have also been slow in coming. Domestic investors are holding on to their money until such time that infrastructures (such as farm-to-market roads, ports and transportation facilities) are improved, long term financing is secured and the general policy environment is improved. Some prefer to invest their money somewhere else.<sup>8</sup>

The Philippines has also not been a priority destination of foreign investors, more so with agricultural investors. According to Bangko Sentral ng Pilipinas (BSP), the Philippines attracted a measly US\$2.8 billion in FDI, relatively small compared to other Asian countries (Tacujan, 2013). Critics blame the constitutional prohibition of 100% foreign-owned investments in the country as a major impediment. Instead, ownership of companies should be 60:40, in which majority of the shares is Filipino-owned (Sec 2, Art XII of the Constitution).<sup>9</sup>

Recent reports, however, show that agricultural investments continue to flow into the country. While a complete data sheet is not available and comprehensive data on agricultural investments are very limited, reports from some government agencies and field documentations by CSOs validate this increase in investments.

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<sup>8</sup> The Wall Street Journal - Saturday, October 12th published an article "Del Monte's Philippine Spinoff to Buy Parent for \$1.68 Billion" that says "Philippine-based Del Monte Pacific Ltd., majority-owned by the country's wealthy Campos family, will acquire the canned-food business of U.S. Del Monte Foods in a \$1.68 billion deal, the latest in a string of U.S. acquisitions by homegrown Asian companies".

<sup>9</sup> For rice and corn, **Presidential Decree No. 194 (1973)** authorizes corporations and similar entities owned in whole or in part by foreigners to engage in the rice and corn industry

### Drivers of Investments

What seems to be driving these investments are the growing global demand for food, the incentives given to biofuel production and the opening up of the economy to agricultural trade and investment.

Food importing countries, alarmed by their experience during the 2008 food crisis, are now directly investing in food production to ensure their own food security. Similarly, the incentives for biofuel are attracting these investments. The Philippine government, for example, gives incentives as provided for in *RA 9367 (Biofuels Act)* and *RA 9513 (Renewable Energy Act)*, in addition to the applicable incentives in the Omnibus Investment Code.

This rise in agricultural investments is expected to intensify in the near future with the increasing global trade liberation. In ASEAN countries, a single market and production base will become a major platform starting 2015 with free flow of goods, services, investments, capital and skilled labor envisioned under the ASEAN Economic Integration, which will involve agriculture, food and forestry on top of other priority sectors (ASEAN Economic Blueprint, 2008).

### Land Investment Arrangements

Despite policy restrictions and low ownership ceiling of agricultural lands, there are still a number of avenues by which land and/or use rights are acquired for large-scale investments in agriculture.

For public domain lands, the Constitution allows lease agreements but with a limit of 25 years, renewable only for another 25 years. In public forests, particularly in areas awarded with community based forest management agreements (CBFMAs), the mechanism is through joint venture agreements where investors are granted the right to use portions of the area for productive use. In ancestral lands covered by IPRA, a Free and Prior Informed Consent (FPIC) by the community is necessary before permission is given to develop portions of the ancestral domain (Eleazar, et al 2013).

In agricultural areas where CLOAs have been awarded, the mechanisms include, among others, lease, out-grower arrangements and management contracts between the CLOA holders and the investors.<sup>10</sup> The Department of Agrarian Reform (DAR) recognizes the importance of agricultural investment in assisting the agrarian reform beneficiaries in fully developing their lands. It promulgated *DAR Administrative Order 9 (AO 9), series of 2009* on rules and regulations governing agribusiness ventures in agrarian reform areas. The *AO* identified and recognized different types of agribusiness partnerships with specific governing policies.

### Issues and Challenges

This shift from public spending to facilitating private investment in agriculture poses new challenges to the local farming communities as well as to the government.

Local farmers and communities will have to take on an additional role, that is, from primary producers to becoming business partners. This requires certain business intelligence and shrewdness in contract negotiation, risk management and handling disputes, among others.

Government also needs to adjust its role from program implementers to regulators of private agricultural investments. On top of its current functions, it will have to establish an information database, a monitoring and evaluation system and mechanisms to settle disputes.

Case studies and field documentation conducted by CSOs on agricultural investments cited a number of issues related to contracting and investment arrangements, impact on the community and the environment, governance, and implications on livelihood.

#### 1. Transparency and access to information

Important and basic documents, such as contracts between the investor and former landowner or with the farmers, have been found to be inaccessible. To make matters worse, farmers lack the technical or legal capacity to audit and examine financial documents. There were also reported cases wherein investors negotiated with spurious representatives of the community resulting to factions in the community. This only served as leverage to investors and put them in a position to take advantage of the divided community.

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<sup>10</sup> The various mechanisms allowed by DAR are elaborated in DAR A09.

## **2. Erosion of land tenure security and loss of livelihood**

Under CARP, land use rights and restrictions are relatively clear and straightforward. The same can be said of the policies and operational procedures of *DAR*. *DAR's AO9 series of 2006* on Agribusiness Ventures on Agricultural Lands recognizes land-related rights and defines procedures for transferring such rights in a manner that is transparent.

And yet, instances of physical and economic displacement of farmers still abound in agricultural investments, wherein investors impinge on the rights of farmers over their land. A case in point is the farmer cooperative in Davao del Norte. The farmers who were accorded with the Certificate of Land Ownership Award (CLOA) entered into a marketing agreement with its former landowner, who a year later assigned its rights over the contract to another corporation. At the end of the 10-year agreement, the farmer cooperative accumulated huge debts. As a way out, they entered into an agreement with the investor who took over the plantation's operations and management. The agreement was for two years and subject to extension until the cooperative could pay off its debts. The cooperative's financial situation did not improve with the takeover in 2008, but more than doubled its debt from that year until 2012. Now, they are in danger of losing their land.

In some cases, investors in search of more profitable ventures would offer to pay off farmers in exchange for their farms. For several farmers in Gimalas, Batangas, this meant more than leaving their farms, but waiving their rights as owners of the land. In return, they got a huge sum and a small lot for their houses.

These examples run contrary to the policy of the State to pursue a genuine agrarian reform program. Instead of establishing owner cultivatorship of economic-size farms as the basis of Philippine agriculture, the outcome painted an entirely different picture: the ubiquitous proliferation of farmworkers and landless farmers.

## **3. Lack of support to farmers in dispute resolution**

With overlaps in land tenure, murky negotiations, unfulfilled promises and deviations from the agreed development plan; it is not surprising for conflicts to arise in many of these agricultural investments.

As a means of addressing them, DAR is vested with jurisdiction over all matters involving the implementation of agrarian reform (Sec. 50 CARPER, Quasi-Judicial Powers of the DAR). Disputes involving ancestral lands are settled through the indigenous communities' own commonly accepted justice systems, conflict resolution institutions, peace building processes or mechanisms and other customary laws and practices that are compatible with the national legal system and with internationally recognized human rights laws (Sec.15 IPRA). Meanwhile, cases related to the environment are taken care of by the DENR while those involving labor disputes are handled by DOLE (Eleazar, et al 2013).

Yet, given these mechanisms for lodging complaints, there is a perceived lack of support in prioritizing farmers, particularly in providing them with the much-needed legal support. Moreover, there is no systematic monitoring on how these conflicts are resolved or if investors complied with the agreement.

#### **4. Degradation of the Environment**

Encroachment of agriculture plantations in the watershed of Cagayan de Oro has been cited as a major contributory factor in the massive flooding during Typhoon Sendong (Washi), an occurrence that was unprecedented in the history of the city. Chemical contamination of the rivers and water system by pesticides has also been reported.

Up north in Semirara Island in Caluya, Antique, seaweed farms are being threatened not just by potential tourism development but by coal mining operations as well. When currents flow from Semirara, the coal dusts impact the seaweeds throughout Caluya resulting in disease and crop losses.

But government laws are not wanting. *PD 1151* or the *Philippine Environmental Policy* prescribes guidelines for EIA and compliance with environmental standards. What is needed is a strong monitoring and compliance mechanism towards a systematic review on how these environmental standards are being adhered to.