

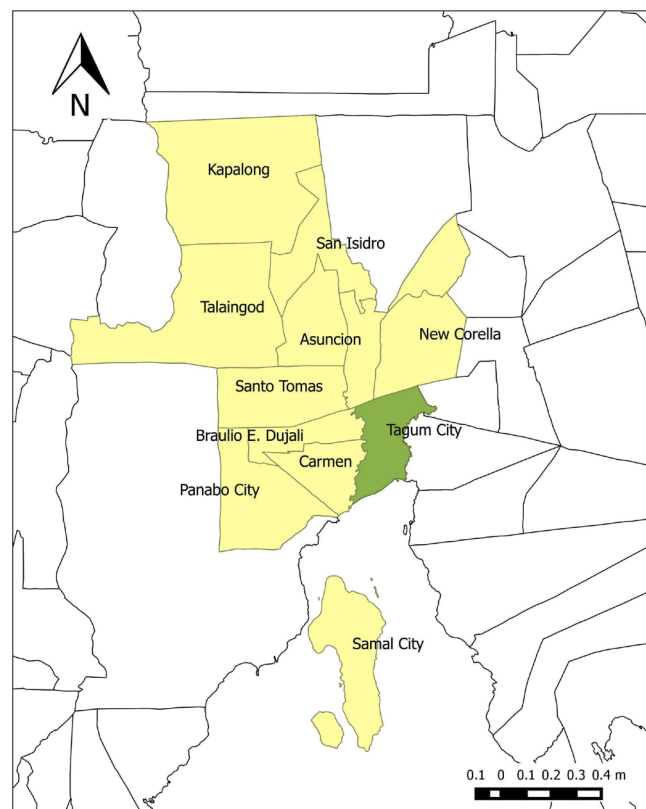
Agribusiness Venture Agreements and HARBCO's gradual descent

The Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO) is a group of 724 ARBs that, under the Comprehensive Agrarian Reform Program (CARP), was awarded a collective Certificate of Land Ownership Award (CLOA) for 579 hectares of land in Tagum, Davao del Norte owned by Hijo Plantation, Inc. (HPI).

In December 1998, HARBCO signed a 10-year Banana Sales and Marketing Agreement (BSMA) with HPI. This move split the group's members into two factions: one that favored the BSMA, and another that did not. The current officers of HARBCO claim that, at the time, those who were against the BSMA were in control of around 40% of the awarded area, and harvested and sold their produce to DOLE-Stanfilco. Occasional conflicts and confrontations arose between the two opposing groups.

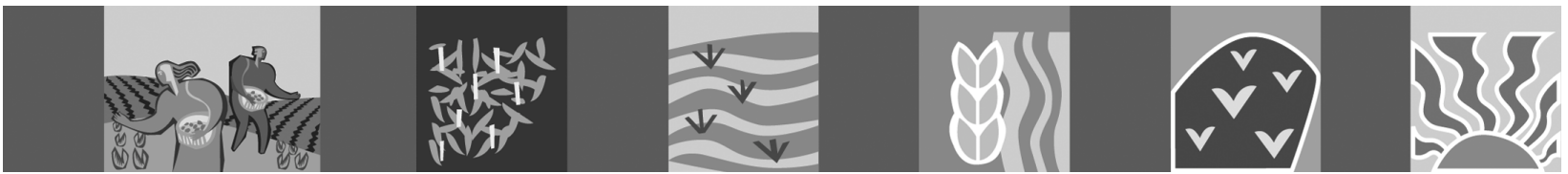
An effort to reconcile the two parties was made in July 1999 resulting in some of those who were against the BSMA actually rejoining the main group. However, just a month after, the most violent clash between the two factions erupted when HPI assigned its rights over the BSMA to Lapanday Foods Corporation (LAPANDAY). In the riot, two HPI employees were killed and some 30 ARBs were injured.

Notwithstanding this incident, HARBCO was able to make inroads in its banana production experiencing a brief period of growth from 2000-



Map of Tagum, Davao del Norte
Geospatial data source: GADM

Condensed from the *Commodification of Right to Land: The Cases of the Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO)* by AR Now! For more details of the case, contact: arnow@phildhrra.net or magscatindig@phildhrra.net.



2003. However, things began to take a negative turn in 2004 because of an alleged aerial spraying sabotage. This resulted in decreasing farm production and increasing liabilities to LAPANDAY in the succeeding years. In 2008, the downturn took hold. HARBCO found itself owing LAPANDAY an astounding PhP115 million and the company took over the operations of the cooperative's farm.

The takeover was initiated on the basis of Article X Paragraph 1 of the BSMA, which granted LAPANDAY the right to take over and handle the farm operations of HARBCO if it deemed that "the success of the crop is endangered" by HARBCO's failure to follow LAPANDAY's "prescribed cultural practices."

In line with LAPANDAY's takeover, a second contract on the General Framework on Farm Handling (GFFH) was executed by the cooperative and LAPANDAY to establish the 'guidelines' to be followed in the operations of HARBCO's farm.

The takeover was to be for a period of two years – subject to extension if there were still unpaid accounts owed by HARBCO to LAPANDAY at the end of the said period. Yet, to this day, LAPANDAY retains control over HARBCO's farm, as the latter's debt to the former, which has grown to PhP332 million as of 2012, has not been paid.

The contract, the culprit

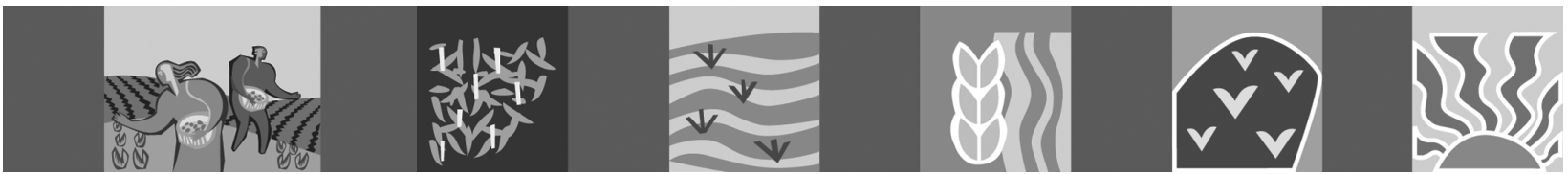
HARBCO's predicament can be traced back to the grossly disadvantageous BSMA contract they entered into with the former landowner, HPI, in 1998. The contract contained a litany of provisions that heavily favored the more enterprising entity, such as giving HPI/LAPANDAY the exclusive right to export HARBCO's bananas, the first option to purchase rejected bananas, and the right of first

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refusal over matters concerning the purchase and marketing of the cooperative's Cavendish bananas even after the contract had expired.

The buying price of bananas for the Japan market was also fixed at \$2.10 per 13 kg (net) box. Although there was a provision for the conduct of a 'price review' every two years, HARBCO claimed that the buying price was never adjusted. Worse, the buying price remained the same for 10 years even as the cost of production significantly increased through the years.

Also included in the BSMA was a provision for the charging to HARBCO of replacement bananas for those rejected at the foreign port. With HARBCO already losing money with the very low buying price of LAPANDAY, the cooperative further lost money whenever bananas that LAPANDAY had already bought and shipped to the importing country (i.e., Japan) were rejected at the port of destination. The cost of replacement bananas, which were bought in the country of destination, was around \$8.50 per 13 kg box. Thus, HARBCO was charged the difference between LAPANDAY's buying price of \$2.10 and the cost of the replacement bananas.



“The dismal situation of HARBCO can also be attributed to the ARBs’ lack of capacity and experience in evaluating business contracts. They did not realize at the time the implications of the provisions of the contract they signed.”

The contract also disallowed HARBCO from reducing or expanding their farm area, and selling banana seeds and seedlings from the farm without ‘prior clearance’ from HPI/LAPANDAY. Furthermore, HARBCO could not sell, dispose of, transfer, assign or lease the land, including the crops planted and permanent improvements introduced by HPI/LAPANDAY thereon, to any third party without the prior written consent of HPI/LAPANDAY.

Officers of HARBCO also claimed that some ARB members of the other cooperatives in the Hijo plantations were involved in sabotaging the aerial spraying operations of the farms. They claimed that the mixture of the aerial sprays was diluted resulting in poor production, which led to the eventual takeover by LAPANDAY of the HARBCO farm and resulted in losses of some PhP78 million.

These provisions and more undermined the agrarian reform principle of providing “farmers and farm workers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands” (RA 6657, 1988). HARBCO was backed into a corner and led deeper and deeper into debt.

Other factors

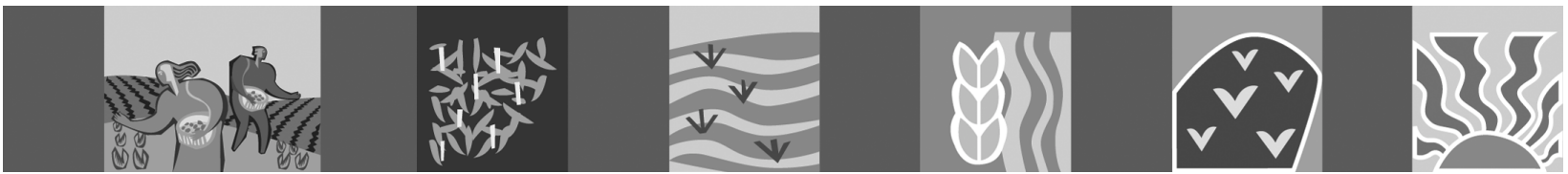
The dismal situation of HARBCO can also be attributed to the ARBs’ lack of capacity and experience in evaluating business contracts. They did not realize at the time the implications of the provisions of the contract they signed. But that should have been the DAR’s look out.

The DAR was supposed to help direct the ARBs’ socio-economic development by ensuring that Agribusiness Venture Agreements (AVA) safeguarded the rights and welfare of the ARBs. Section 4.6 of the DAR Administrative Order 09-06 clearly provides that (DAR, 2006):

In order to ensure that the rights and welfare of the ARBs and their cooperative/association are protected, the DAR shall be a signatory to the AVA contract, subject to the review and favorable endorsement by the National AVA Evaluation Committee or the AVA-Task Force (TF) at the DAR Provincial Office (DARPO), as the case may be.

Yet, the DAR was not a signatory to the BSBMA between HARBCO and HPI/LAPANDAY.

Moreover, several sections of the BSMA contravened the ARBs/landowners’ property rights by not allowing them to decide on the use of their lands, crops to be planted, and selling price of their produce. In such case, the AVA should have been approved by the Presidential Agrarian Reform Council (PARC) or PARC ExCom, and should have been signed by the DAR Undersecretary of Policy Planning and Legal Affairs Office (PPLAO) or the Provincial Agrarian Reform Office (PARO). However, the BSMA between HPI/LAPANDAY was neither approved by PARC/PARC ExCom nor signed by the DAR PPLAO Undersecretary.



The said AO 09-06 further stipulates that:

1. Section 4.17 – For the duration of the AVA contract, the DAR must ensure the viability and stability of the cooperative/association as a business partner and entity through effective periodic monitoring and intervention measures/strategies;
2. Section 4.19 – The DAR shall ensure that the AVA contract shall include provisions to help promote the development and transformation of ARBs from mere laborers and labor union members to farm owners, cooperative members, and business entrepreneurs and managers;
3. Section 4.21 – The AVA contract shall provide sanctions for non-compliance by either parties and shall be periodically monitored by the DAR.

But these provisions were not observed in the case of HARBCO. No social preparation, capacity-building, nor assistance was given by the DAR to the ARBs to better equip them in the negotiation for and evaluation of the agreement. Officers of HARBCO also claimed that their only legal support during the negotiations was a lawyer provided by the Public Attorney's Office (PAO).

Another consequence of the insufficient legal and technical support during the negotiations of the BSMA was the lack of key 'safety net' provisions, such as authorizing HARBCO to audit HPI/LAPANDAY on sales, expenses, charges, etc. Another factor that perhaps played a key role in the realization of the lopsided contract was having CARP beneficiaries who were former members of the HPI management involved in the negotiations. Being former employees of HPI, these individuals may have been beholden to the former landowner. They failed to guide or at least did not properly advise the inexperienced officers of the newly established cooperative.

The existence of pro-BSMA and anti-BSMA factions may also indicate that the majority of the ARBs/farmworkers (who comprised the pro-BSMA faction) were pro-HPI and may have also been indebted to their former landowner/ employer.

HARBCO's experience is a case of ARBs who may, on paper, still own the land awarded to them but, in actual practice, have lost control and access to it by means of a corporate takeover. ARBs, who are the actual landowners, have become hired farm workers and cooperative employees of LAPANDAY in the very farm awarded to them.

Since the takeover, the ARBs and the cooperative rely only on their income as "laborers" and "employees" of LAPANDAY. Those ARBs who have not been hired by LAPANDAY have not received any salary from the cooperative. The cooperative, too, offers no other services or programs.

LAPANDAY has also hired non-ARBs to work as laborers in the plantation. Allegedly, ARBs who have not been hired by LAPANDAY have been denied entry into the farm (except in the housing area), and forced to look for work in other cities and/or industries. ■

Reference:

AO 9 series of 2006. *Revised rules and regulations governing Agribusiness Venture Agreements (AVAs) in agrarian reform areas.* September 8, 2006.

RA 6657. *Comprehensive Agrarian Reform Law of 1988.* June 10, 1988.

For the complete list of references, please contact the author of this case as indicated at the beginning of the article.