

3.0 | Agrarian reform in private agricultural lands

The people-led revolution that overthrew the Marcos dictatorship signalled a period of reforms. Newly-installed President Corazon Aquino declared agrarian reform as a centerpiece program of her administration. However, in January 1987, 13 farmers were killed and 51 others injured when anti-riot police open-fired on unarmed protesters demanding agrarian reform. In July 1987, President Aquino issued Executive Orders 131 and 229 which instituted CARP.

Following the ratification of the 1987 Philippine Constitution, the Congress for People's Agrarian Reform (CPAR) composed of 12 national peasant federations, campaigned for the passage of a genuine agrarian reform law, the People's Agrarian Reform Code (PARCODE). After intense lobbying in Congress, the Comprehensive Agrarian Reform Law (RA 6657) was enacted in 1988, as a compromised version of PARCODE.

Comprehensive Agrarian Reform Program. RA 6657 mandates the acquisition and distribution of all public and private agricultural lands and the provision of support services to agrarian reform beneficiaries. The law sets a 5-hectare ownership ceiling of agricultural land; landowners may retain five hectares, plus three hectares to each qualified beneficiary (i.e., children). It provides just compensation to landowners and prohibits the transfer of CARP-awarded lands except through hereditary succession. It exempts and excludes certain types of landholdings from agrarian reform coverage, and sets a timeline of 10 years to complete LAD. It protects the tenure of the tenant farmers by adopting the leasehold system and gives tenant farmers the same benefits as that of agrarian reform beneficiaries.

In 1998, Congress passed RA 8532 that provided an additional 10 years and funds to complete CARP's LAD phase. Yet in 2008, LAD remained incomplete. Thus, agrarian reform advocates launched a massive campaign for the passage of the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER). In June 2009, during the last session days before Congress adjourned, the CARPER law or RA 9700 was passed.

RA 9700 was designed to fast-track LAD implementation. It instituted several reforms:

- Removal of Voluntary Land Transfer (VLT) and the Stock Distribution Option (SDO) as modes of land acquisition and distribution;
- Conferring the indefeasibility under the Torrens title system of land titles (i.e., CLOAs and EPs) issued under CARP;
- Making it easier for ARBs to cope with their amortization payments, by moving back the start of amortizations to one year after their possession of the land;
- Limiting the role of the Registry of Deeds (ROD) to ministerial duties in the registration of titles issued under CARP;
- Prohibition on the conversion of irrigated and irrigable lands; and,
- Increased penalties for violators of CARP.

RA 9700 also instituted program-wide changes:

- Appropriation of at least PhP 150 billion for CARP, with 40 percent of the DAR budget allocated to support services, with equal support services for men and women ARBs, and provision of start-up capital to new ARBs and socialized credit to existing ARBs;
- Granting DAR with exclusive jurisdiction over all agrarian cases, and prohibiting lower courts from issuing temporary restraining orders or injunctions on CARP implementation;
- Transferring jurisdiction over all cancellation cases from DARAB to the DAR Secretary;
- Creation of a Congressional oversight mechanism to monitor CARP implementation; and,
- Setting a deadline of 30 June 2014 to commence LAD proceedings on all private lands covered under CARP.

However, some provisions in RA 9700 seem to undermine the principle of “land to the tiller.” One is the order of priority for qualified farmer beneficiaries, which is tricky. It states that DAR shall prioritize the award of lands among tenants and regular farmworkers, and only after these beneficiaries have been allocated three hectares each shall the remaining portion of the landholding, if any, be distributed to other qualified beneficiaries. In many cases, this provision is likely to result in the disenfranchisement of non-regular farmworkers. Second is the requirement for a landowner’s attestation to the list of qualified farmer beneficiaries. This enables the landowner to influence the selection of farmer beneficiaries, to the exclusion of qualified farmworkers not loyal to him or her.

Status of CARP implementation

As the lead agency, DAR is responsible for three interrelated components: (i) Land Acquisition and Development (LAD), (ii) Agrarian Justice Delivery (AJD), and (iii) Support Services for Program Beneficiaries Development (PBD).

On Land Acquisition and Distribution (LAD)

Table 5 shows that DAR has distributed 90 percent of its LAD working scope after 30 years of CARP. As of 1 January 2018, however, the LAD balance is 561,131 hectares, of which, 520,674 hectares (93 percent) are private agricultural lands. Of these private lands, 70 percent are under compulsory acquisition (Table 5). Adding the landholdings without NOCs and those with pending cases, the actual LAD balance should be around 760,000 ha.²

Table 5. LAD accomplishment by target scope and mode of acquisition, as of 31 December 2017.

Land Type/ Mode of Acquisition	Total Working Scope* (in ha)	Total Area Accomplished as of 31 Dec 2017 (in ha)	Accomplished as percent of Working Scope	Remaining Balance as of 01 Jan 2018 (in ha)
Private Agricultural Lands (PAL)	3,173,465	2,652,791	84%	520,674
Operation Land Transfer (OLT)	616,553	596,213	97%	20,340
Gov't Financial Institutions (GFI) lands**	184,919	172,329	93%	12,589
Compulsory Acquisition (CA)	749,884	384,366	51%	365,519
Voluntary Offer to Sell (VOS)	753,685	656,199	87%	97,485
Voluntary Land Transfer (VLT)	868,425	843,683	97%	24,742
Non-Private Agricultural Lands (Non-PAL)	2,177,900	2,137,443	98%	40,457
Settlements	831,402	816,021	98%	15,381
Landed Estates	91,776	83,543	91%	8,233
Government-owned lands (GOL)/ KKK lands	1,254,722	1,237,879	99%	16,843
National/Total	5,351,365	4,790,234	90%	561,131

Source: DAR Bureau of Land Tenure Improvement, 2018.

² DAR Presentation for Organizational Briefing at the Senate Committee on Agrarian Reform, 24 August 2016.

Officially, the largest remaining balances are in the Bicol, Eastern Visayas, Western Visayas and ARMM regions (Table 6). In Western Visayas, 80 percent of the LAD balance is in the province of Negros Occidental and consists mainly of large private plantations. In Eastern Visayas, 80 percent of the LAD balance are private lands in the province of Leyte.

Table 6. Number of agrarian reform beneficiaries and cumulative LAD accomplishments, 1972-2017

Region	Cumulative LAD Accomplishment 1972 to Dec 2017 (in ha)	Cumulative Number of Agrarian Reform Beneficiaries 1972 to Dec 2017	Average Land Size per Beneficiary (in ha)	Remaining Balance as of 01 Jan 2018 (in ha)
NATIONAL	4,790,234	2,835,743	1.6892	561,131
CAR	102,496	81,569	1.2566	2,365
I – Ilocos Region	143,510	119,370	1.2022	1,232
II – Cagayan Valley	366,914	212,064	1.7302	43,367
III – Central Luzon	431,537	284,179	1.5185	13,134
IV-A – CALABARZON	189,957	124,229	1.5291	19,289
IV-B – MIMAROPA	180,414	130,753	1.3798	3,196
V – Bicol Region	325,373	195,292	1.6661	78,558
VI – Western Visayas	412,243	317,908	1.2967	134,621
VII – Central Visayas	184,350	147,637	1.2487	12,268
VIII – Eastern Visayas	433,747	196,689	2.2052	58,411
IX – Zamboanga Peninsula	228,874	131,271	1.7435	7,015
X – Northern Mindanao	361,563	218,565	1.6543	18,599
XI – Davao Region	248,828	180,382	1.3795	8,817
XII – Central Mindanao	687,490	289,173	2.3774	33,740
XIII – CARAGA	271,343	136,101	1.9937	15,417
ARMM	221,595	70,561	3.1405	111,100

Source: DAR Bureau of Land Tenure Improvement, 2018.

In recent years, however, the need to fast track LAD seems to have been overlooked. DAR accomplished only 27 percent of its LAD target in 2016, and 82 percent of its LAD target in 2017. Under its rationalization plan, the DAR had reassigned more field staff to provinces with high LAD backlogs, but the results remain far from what was desired.

The reasons for DAR's implementation delays in recent years include:

- The overly cautious attitude of DAR implementers for fear that landowners will file cases against them if they proceed with CARP

coverage, and with no DAR lawyers to represent them. This impedes the LAD process for private agricultural lands.

- DAR's lack of capability and resources to conduct simultaneous surveys and field investigations, partly due to the lack of in-house survey teams.
- Continuing landowner resistance even after the issuance of EP/CLOAs to the ARBs. In Eastern and Western Visayas, many former landowners are still in possession and control of lands already awarded to farmers. DAR's lack of interest to run after violators encourages more circumvention and resistance to the program.
- Frequent changes in DAR leadership (three Secretaries in 2016-2018), along with conflicting issuances and changing priorities under each new administration.
- Administrative Order 7, Series of 2011 slowed down LAD implementation on landholdings with pending cases as it constrained DAR from completing the LAD process if a case questioning CARP coverage of a landholding is not yet denied by the Office of the President. This issuance was amended twice, and finally revoked – under three successive DAR Secretaries.

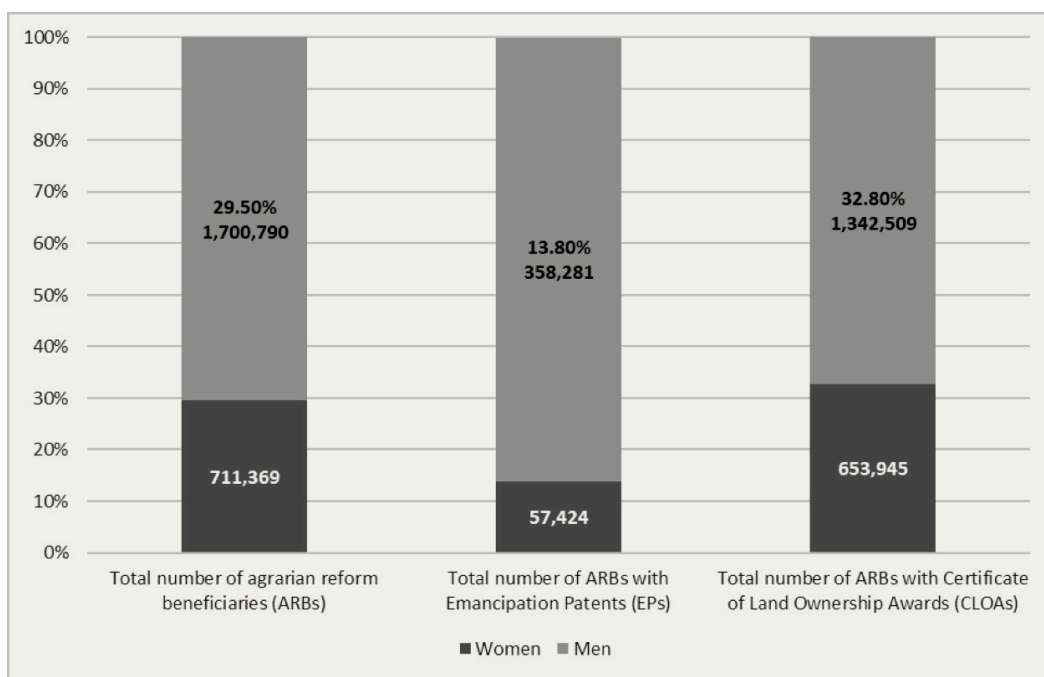
Status of the leasehold program. RA 3844 enacted in 1963 was the first non-redistributive agrarian reform program which sought to protect the rights of tenant farmers. It ensures tenant rights to a homelot, and outlaws share tenancy in favor of leasehold arrangements. According to DAR, the leasehold program benefits over 1.2M tenants in 1.8M hectares of agricultural land. The 2016 and 2017 DAR accomplishment reports also indicate that DAR exceeded its leasehold targets. However, there are indications that the leasehold program has been generally neglected by the DAR over the past few decades:

- DAR has no comprehensive database of all the target landholdings for leasehold operations from which to compare and validate the accomplishments. The data available only show cumulative accomplishments since 1987 (including contracts that have been renewed), rather than the total number of beneficiaries and total area of farms currently under leasehold.
- Under the existing policies, leaseholders are considered agrarian reform beneficiaries with equal benefits to those ARBs awarded with land, yet no data are available on the support services given by the government to leaseholders.

- Tenants under the leasehold system have rights of pre-emption and redemption³ in the event that their landowners want to sell the land. According to the Land Bank, a tenant can seek financial support from the bank through the DAR, to buy out their cultivated land, but this process is not well-known to tenants or to DAR field staff.
- Meanwhile it is well-known and documented that share tenancy remains widespread despite being outlawed, even among those with existing leasehold contracts.⁴

Women’s rights to land. DAR data reveal that, of the total 2.4 million agrarian reform beneficiaries as of 2015, only 29.5 percent are women. Moreover, women account for only 13.8 percent of all ARBs with Emancipation Patents (EPs), and only 32.8 percent of all ARBs with CLOAs (Figure 2).

Figure 2. Distribution of agrarian reform beneficiaries by sex, as of December 2015.



Source: Philippine Statistics Authority (PSA). (2016). Women and Men in the Philippines: 2016 Statistical Handbook.

Presidential Decree 27 which instituted Operation Land Transfer (OLT) in 1972 had no specific provisions on women’s equal rights to land, and this partly accounts for the very low proportion of women with Emancipation Patents.

³ Right of pre-emption is the preferential right of the tenant to purchase the land in case the landholder decides to sell the land. The right of redemption is the right of the tenant to re-purchase the land that he is tilling that was already sold to other parties.

⁴ Examples of such cases are cited in: Lim, Ernesto, Jr. (2016). *Land and water rights issues in Yolanda-hit areas: Learnings from Eastern Samar and Leyte.* AR Now! and Kaisahan policy paper.

Later, RA 6657 or the CARP Law of 1988 stated that “all qualified women members of the agricultural labor force must be guaranteed and assured equal right to ownership of the land, equal shares of the farm’s produce, and representation in advisory or appropriate decision-making bodies” (Section 40-5). However, this provision had no implementing rules and regulations until the mid-1990s.

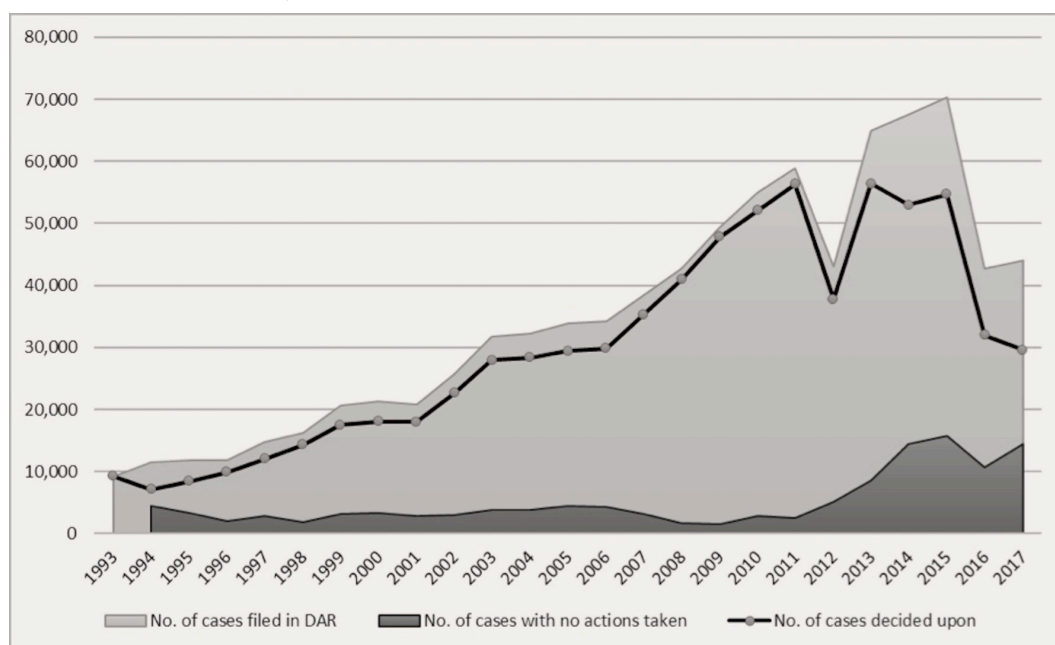
DAR Circular 18/1996 mandated the issuance of EPs and CLOAs in the names of both spouses as co-owners. It was only through RA 9700, however, that an expressed provision in the law recognized women’s right to own and control land “independent of their male relatives and of their civil status.” The law also mandated the provision of “equal support services for women.”

For 2010 to 2015, the data show a slight improvement – women constituted 38.6 percent of all ARBs issued with CLOAs during this six-year period. However, this underlines the continuing need for more decisive action to ensure equal land rights for women.

On Agrarian Justice Delivery (AJD)

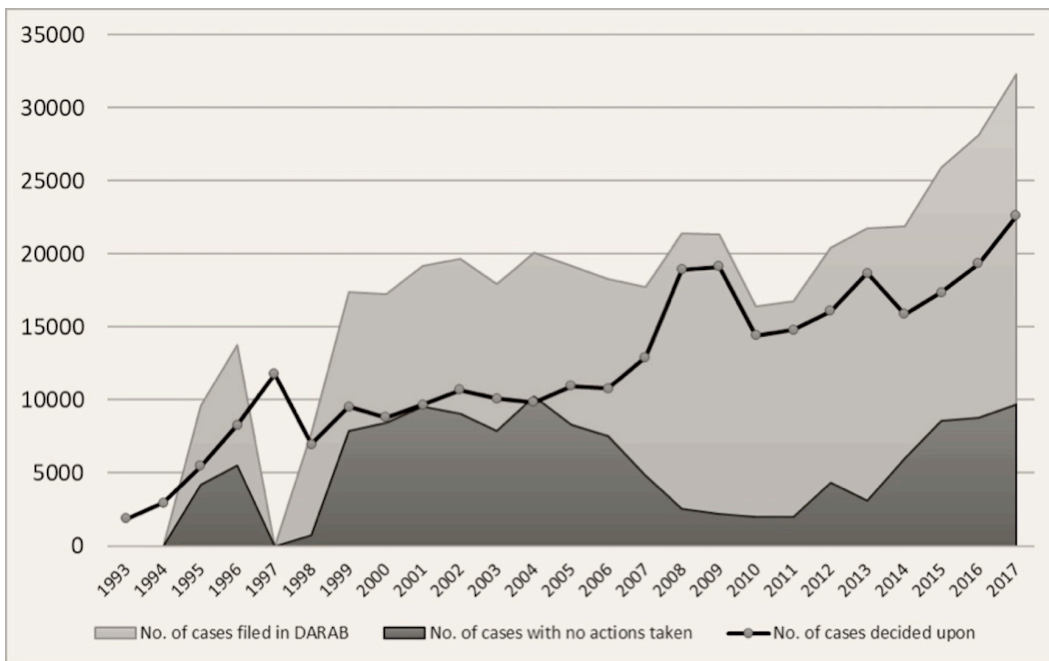
Agrarian reform is a social justice program founded on the rights of landless farmers and farmworkers to own directly or collectively the lands they till.

Figure 3. Agrarian Law Implementation (ALI) cases addressed through DAR administrative decision, 1993-2017.



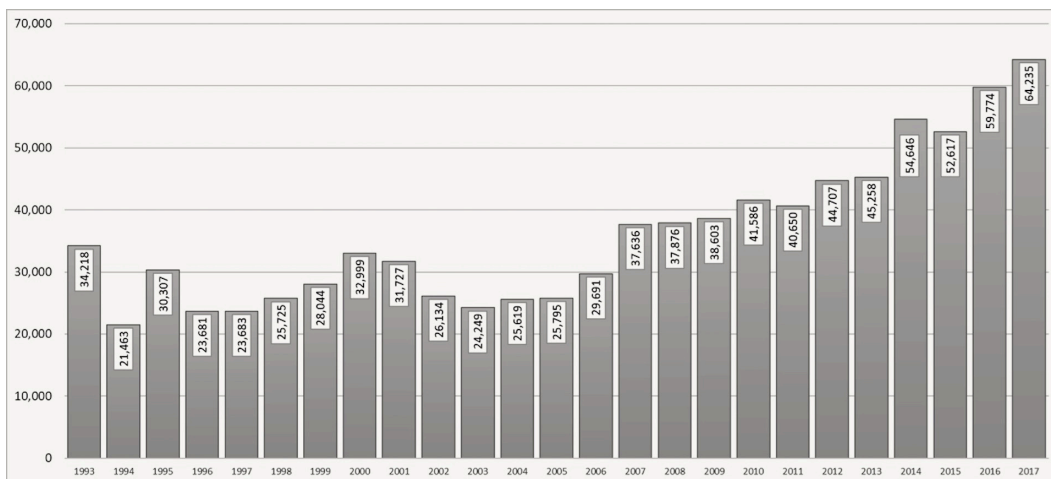
Source: DAR Legal Affairs Office June 2018

Figure 4. Agrarian cases submitted to the DAR Adjudication Board (DARAB) for quasi-judicial decision, 1993-2017.



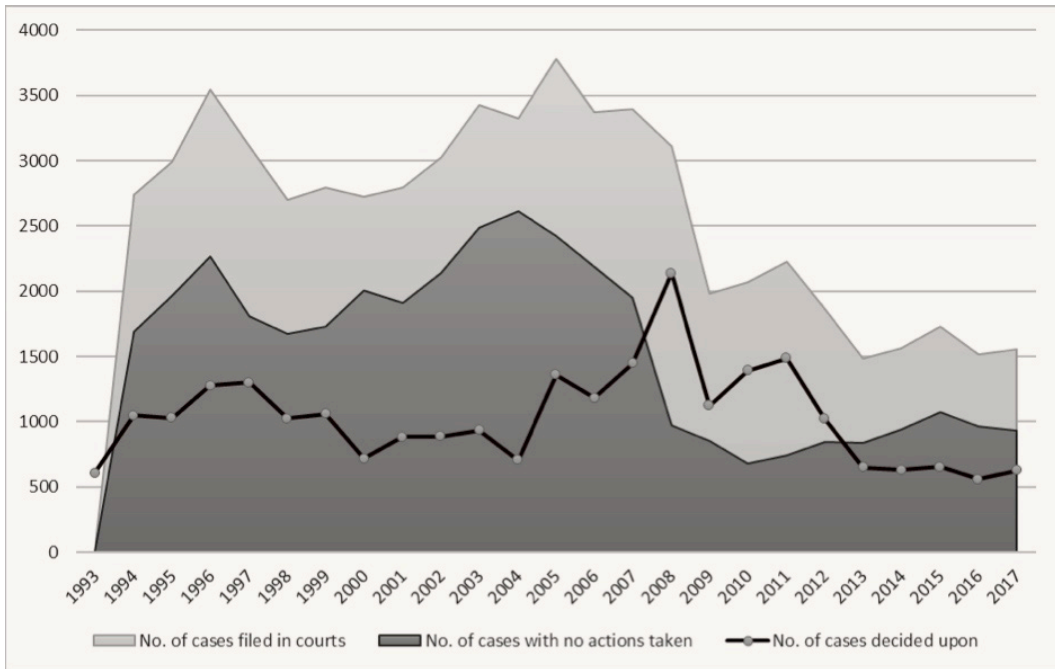
Source: DAR Legal Affairs Office June 2018

Figure 5. Agrarian cases addressed through DAR mediation, 1993-2017.



Source: DAR Legal Affairs Office June 2018

Figure 6. Agrarian cases submitted to the courts for judicial resolution, 1993-2017.



Source: DAR Legal Affairs Office June 2018

The implementation of the program has been contentious and problematic, especially in acquiring private agricultural lands. Figures 3, 4 and 5 above show the annual volume and disposition of agrarian dispute cases.

A high volume of agrarian-related cases remains after 30 years of CARP implementation. There has been a dramatic increase in the number of Agrarian Law Implementation (ALI) cases, DARAB cases, and Mediation cases recorded after RA 9700 was passed in 2009. On the other hand, there has been a rapid decline in the volume of agrarian cases filed with judicial courts, due to RA 9700 that granted DAR the exclusive jurisdiction over all agrarian cases.

There is renewed resistance among landowners who resort to filing legal cases to stop CARP coverage of their lands. But while the DAR legal office recorded a high accomplishment rate in the number of cases resolved, how these cases have been decided cannot be determined from existing data. Until recently, there was no systematic tracking of cases, such that disputes may reoccur on the same property, or past cases may be reopened. Accomplishments refer to the number of decisions and actions taken on cases, rather than whether the specific land disputes had been permanently resolved.

In practice, the DAR provides legal advice but not lawyers to defend farmers or DAR officials in court cases. There is a legal fund which DAR personnel can avail of for legal defense, but some say that this is insufficient. The situation is worse for farmers and workers, as they cannot afford the legal costs. Meanwhile, the legal staff in local DAR offices seem inadequate for coping with the growing number of cases, especially in provinces with high LAD balances and strong landowner resistance.

On support services for Program Beneficiaries Development (PBD)

Agrarian reform beneficiaries consist of former tenants, farmworkers, seasonal workers and landless. Most are poor and in debt, and thus need external support to make their lands productive and profitable. Table 7 shows the summary accomplishments in PBD in the past 30 years of CARP.

Based on DAR data, only 53 percent of existing ARBs had access to a package of support services (credit, farm to market road, post-harvest facilities, access to market, extension services, equipment). These ARBs are part of the 2,216 Agrarian Reform Communities (ARCs) or the Agrarian Reform Community Cluster (ARCC) areas. Most of support services were financed through loans and grants under foreign-assisted projects implemented by DAR.

Some ARBs were able to avail themselves of specific support services like credit, extension services, farm inputs, post-harvest facilities, irrigation from DAR and implementing agencies, but not the whole package and on consistent basis. The problem is the overall lack of mechanisms at the national and local levels for the effective delivery of support services to ARBs and small farmers.

As the Department of Agriculture (DA) is a devolved agency, the work of agriculture extension has been transferred to LGUs who often lack the needed budget and personnel for the task.

Moreover, most of the support service windows of the government can be availed of only by ARB organizations (ARBOs) but not by individual ARBs. RA 9700 attempted to address the lack of support services to individual ARBs by mandating the provision of initial capital to new ARBs, but this was not implemented.

Today there are socialized credit programs for ARBs – i.e., the Agrarian Production Credit Program (APCP), the Sikat-Saka of Land Bank and the Accessible and

Table 7. Summary of PBD accomplishments in agricultural support services, 1987-2017.

Support services	Accomplishments
Agrarian Reform Communities (ARCs)	Total number of ARCs launched: 2,216 No of ARBs in ARC areas: 1,526,633 Total number of ARC Barangays: 9,724 Total number of ARC Municipalities: 1,288
Credit	Total credit for agri production and livelihood projects: PhP 12.454 Billion Total ARBOs receiving credit: 11,511 Total projects supported: 361,042⁵ Total ARBs benefited: 1,474,113⁶ Number of ARBOs that have become microfinance providers: 1,172 *Average credit availed per assisted ARB Organization: PhP 1.664 Million *Average credit availed per assisted AR Beneficiary: PhP 13,243
Irrigation systems	Total area irrigated: 285,370 hectares Total number of irrigation systems: 1,576
Pre- and post-harvest facilities	Total number of projects: 730 Total number of pre- and post-harvest facilities: 3,705
Multi-purpose pavements	Total number of multi-purpose pavements: 412 Total area covered by multi-purpose pavements: 129,211 square meters
Farm-to-market roads	Total number of kilometers: 23,435 kilometers Total number of farm-to-market roads: 9,589
Bridges	Total number of bridges: 498 Total linear kilometers: 18,866
Community-based social services	Total number of potable water systems: 5,281 No. of HH: 83,941 Total number of power supply projects: 955 No. of HH: 31,901 Total number of classrooms: 1,747 No. of HH: 65,045 Total number of health center buildings: 628⁷ No. of HH: 75,147

Source: DAR-LRSD, 2018.

Sustainable Lending (ASL) program for small farmers. But the APCP and ASL cannot be availed of directly by individual ARBs but only through agri-based organizations and cooperatives, while the Sikat-Saka can be availed of only by individual palay (rice) farmers in irrigated lands.

Support services for women. On the equal access of women ARBs to support services, the government in 2016-2017 appropriated only PhP 4 million per year for support services to rural women. This is not compliant with provisions of

⁵ As of December 2015

⁶ Total number of ARBs with either agri-credit or micro-finance assistance/services

⁷ Lower by 19 buildings on the reported accomplishment in 2015 (647)

existing laws that require agencies to allocate at least five (5) percent of their general appropriations for gender and development (GAD) activities.⁸

Agribusiness venture agreements (AVAs). Due to the overall lack of public investments in agriculture and the difficulty in accessing government’s support services, some ARBs were forced to engage in agribusiness ventures with the private sector. DAR was not able to monitor AVAs and thus, unfair and unregistered AVAs proliferated, especially lease-out and leaseback agreements. In DAR records, there are 433 registered and approved agri-business venture arrangements and most of these involve ARBs leasing out their awarded lands. There are many cases where landowners offer to lease back the lands by offering cash advances, even before the land is formally turned over to the ARBs.

Payment of land amortizations

Table 8 shows the amount paid in landowners’ compensation as of June 2018. A total land valuation of PhP74.26 billion was paid to landowners, an amount

Table 8. Landowners’ compensation as of 30 June 2018.

Program Type	Land Value Paid to LO	Regular Subsidy	Increase due to Revaluation/ Court Decisions	Land Value to be amortized by ARBs
	(a)	(b)	(c)	[d=(a-b-c)]
PD 27/ EO 228	3,292.99	0.00	292.68	3,000.31
RA 6657	54,474.05	1,977.59	2,585.74	49,910.72
RA 9700	16,491.65	6,561.03	46.97	9,883.65
Total	PhP 74,258.69	PhP 8,538.62	PhP 2,925.39	PhP 62,794.68

Source: Agrarian Services Group, Land Bank of the Philippines, 2018.

which includes PhP8.54 billion in statutory State subsidy and the PhP2.93 billion increase in land valuation as a result of just compensation cases. Note that under the law, the gap between the “just compensation” amount paid to the landowner and the “affordable” price paid by the beneficiary is subsidized by the government. Also, not all CARP lands are compensable, as some types of land (government-owned lands) are distributed without payment (free).

Table 9 shows that PhP62.79 billion is the total amount of amortization to be paid by 926,042 ARBs for awarded private agricultural lands covering 1.58 million hectares. Seventy percent (PhP43.72 billion) of the amount to be collected to ARBs are not yet due for payment because its current status is “Not Classified as

⁸ RA9710, Sec. 36, par. A, DAR A.O. 1, series of 2011, sec. 5-G

Table 9. Land amortization collections from ARBs, as of 30 June 2018.

Particulars	Amount (Billion PhP)	Area (000 ha)	No. of ARBs
1. For amortization by ARBs (LPEX)	62.79	1.581	926,042
2. Not Classified as Agrarian Reform Receivables	43.72	0.810	421,817
3. Classified as Agrarian Reform Receivables	19.07	0.771	504,225
a. Amount Due & Collectible	9.71		
b. Not Yet Due	9.36		
4. Payments			
a. Fully-paid	5.06	0.368	254,437
b. Partially paid	0.87	0.201	118,916
c. Not Yet Due	0.26		
Total payment	6.19		
Collection Rate	62%		

Source: Agrarian Services Group, Land Bank of the Philippines, 2018.

Agrarian Reform Receivables.” These are mostly landholdings with collective CLOAs and/or without Land Distribution and Information Sheets (LDIS). The subdivision of collective CLOAs and preparation of LDIS are tasks of DAR.

The remaining 30 percent (PhP19.07 billion) is classified as “Agrarian Reform Receivables (ARR)” – meaning the ARBs have a land amortization schedule and now obligated to pay land amortization. It consists of PhP9.71 billion as “amount due and collectible (ADC)” and PhP9.36 billion as “not yet due accounts.”

The total amortization already paid by the ARBs is PhP6.19 billion, and the unpaid amortization amounts to PhP3.7 billion. The collection rate on land amortization is a low 62 percent with an increase of 32.62 percent from January to June 2018 compared to the same period in 2017.

Implementation issues in CARP

Issues in land redistribution and tenure reforms

LAD accomplishment remains far from complete after 30 years. If there are no major changes, and with an average of 30,000 hectares in annual accomplishments, the government will need 19 more years to complete LAD on the remaining 561,131 hectares, and 25 years if those CARP-able lands without

NOCs and with pending agrarian cases are included. Key implementation issues in recent years include:

Landowner resistance. Landowner resistance comes in the form of legal cases, threats, intimidation, physical violence and killings. But this resistance also comes in other forms:

- *Chop-chop* titles. DAR has the sole authority over all transactions (transfer, conveyance, conversion) involving agricultural land. However, large landowners employ different strategies to avoid CARP coverage, including the illegal subdivision and transfer of land titles to children, relatives, and dummy corporations. To avoid CARP coverage, they divide the land into smaller plots (5 hectares and below) and register these with the Registry of Deeds (ROD), without DAR clearance.
- Legal cases are filed by landowners, including exemption and exclusion cases to avoid CARP coverage. The earlier policy (AO 7 of 2011) prevented DAR from completing the LAD process over landholdings with pending cases. To address the major loopholes of AO 7, it was repealed with the issuance of the AO 5 in August 2017. However, certain provisions of AO 5 of 2017 were suspended through the enactment of AO 6 of 2017 in December 2017.
- Landowners prevent DAR and LBP from conducting field investigations and surveys. There is also a lack of survey teams in provinces with high LAD balance to do perimeter surveys.
- Landowners prevent ARBs from gaining access, control and possession of their awarded land. Some ARBs who were awarded land 20 years ago have not yet been able to enter and cultivate their land.⁹ Moreover, some landowners continue to collect rent from their former tenants.
- Conflict between ARB factions due to divided loyalties. Conflicts also arise between farmer beneficiaries and loyal supporters of the landowners, especially in large haciendas and plantations.

The overly-cautious attitude of DAR implementers. Many of the DAR officials involved in the LAD process are nearing retirement age. They fear that landowners will file cases against them and the DAR will not provide them with legal assistance. Should they have a pending case, it will be difficult for them to claim their retirement benefits.

Erroneous Farmer Beneficiary (FB) identification. The new process of identifying farmer beneficiaries involves the submission of pertinent documents to establish

⁹ A case in point is the Nemecio Tan Estate in Pilar, Capiz. See: Serafica, Raisa (2017). Farmer killed by Gunmen in Capiz Land Dispute Picket. In *Rappler*, 14 February 2017.

their eligibility, and a certification from the landowner recognizing that they are farmworkers on his/her land. Thus, many qualified farmworkers have been disenfranchised as farmer-beneficiaries.

Problematic surveys. Due to poor land survey work by the government, there were instances where the CARP survey teams could not locate some of the coordinates indicated in the land titles. While these can be corrected, they could affect adjacent properties and would require more time and resources to complete the survey.

DAR policy issuances slow down LAD process. Unfavorable policy issuances and the change in policy with each newly-appointed Secretary slowed down the LAD process in recent years, confusing local implementers, while others seem to use it as an excuse to delay the LAD process.

DAR's inability to issue new NOCs. RA 9700 set a deadline of 30 June 2014 to commence LAD proceedings on all private agricultural lands to be covered by CARP. However, DAR failed to issue Notices of Coverage (NOCs) for thousands of landholdings covering more than 206,000 hectares¹⁰. Moreover, DAR has classified some NOCs they issued as "erroneous"¹¹ for varying reasons, and has removed these from its LAD targets. Thus, the task of LAD cannot be completed without a new law or executive order to address the inability of DAR to issue new NOCs.

Inequitable access to land by landless women farmers. Despite existing laws (RA 9700 and RA 9710 or the Magna Carta of Women) and administrative issuances, data show that rural women still lack equal rights to own, manage and control land, as shown by the low proportion of women among EP and CLOA holders. There is still a lack of awareness on women's land rights under the agrarian reform program.

Lack of support service programs for farmworkers terminated by their landowners due to CARP participation. Many farmworkers, especially in plantations of sugarcane, pineapple, banana and other crops were fired/evicted by their employers/landowners when they enlisted in the agrarian reform program. These farmworkers have no other source of livelihood and find it difficult to find new work in other farms. They also receive little or no livelihood support from government.

¹⁰ DAR Presentation for Organizational Briefing in the Senate Committee on Agrarian Reform, 24 August 2016.

¹¹ Erroneous NOC means NOC that is inaccurate or contains typographical or clerical or substantial error.

Lack of support for the leasehold program. While the data show that DAR exceeded its annual leasehold targets in recent years, this program needs to be reviewed. DAR still has no comprehensive database of all the target landholdings for leasehold operations. There are indications that the leasehold program has not been given its due priority, as share tenancy remains widespread despite being outlawed in 1963. Leasehold should be an important component of the agrarian reform program.

Issues in the delivery of agrarian justice

Slow disposition of cases. Farmworkers cannot sustain their legal battles due to the expensive and very slow disposition of agrarian reform cases. Judicial courts often take years to decide a case with finality and without assurance that the case will be decided in favor of the farmers.

Limited legal assistance to ARBs and to DAR officials performing their mandate. It is difficult to find lawyers in rural areas who are willing to represent the farmworkers in judicial and quasi-judicial bodies, especially if the case is pro-bono. Most of the lawyers in those areas with high LAD balance are either not familiar with agrarian reform, from landed families, or already representing the landowners. Meanwhile, the legal staff in the local DAR offices are not enough to cater to the demand for legal assistance, especially in the provinces with high LAD balances and with a history of strong landowner resistance.

Issues in providing support services to ARBs

A comprehensive, effective and efficient delivery of support services to agrarian reform beneficiaries will help CARP awarded lands become more productive, diverse, and economically feasible. This will also encourage ARB families to sustain and farm the land and will prevent illegal sale, conveyance and leasing of CARP lands. Here are some of the emerging issues on PBD:

Insufficient and inefficient support services for ARBs. The PBD component of CARP remains underfunded, and the DAR is not taking into consideration in their budget preparations the existing appropriations provisions of RA 9700 and the mandatory 5 percent for GAD (RA 9710). RA 9700 mandates the government to provide socialized credit to existing ARBs and initial capital to new ARBs, but this provision was not fully implemented. The delivery of support services is

insufficient as well. CARP implementing agencies have various programs that the ARBs can access, but the problem is the lack of mechanisms at the national and local levels to strategically plan and coordinate the delivery of support services. These agencies have different requirements, priorities and application processes. DA is likewise mandated to provide support services to farmers, yet the department does not prioritize ARBs. Much of its functions are devolved to the LGUs, where the process of selecting beneficiaries and providing support services can be highly-politicized and dispensed as “political favors.”

Small percentage of organized ARBs. According to the DAR data (1993 to June 2016), there are 5,586 ARB organizations (ARBOs), of which 4,767 ARBOs are in the ARC areas and 819 are in non-ARC areas. ARBOs within ARCs have a total of 793,282 members, but only 37 percent or 296,301 members are actual agrarian reform beneficiaries.¹² Given that there are over 2.8 million ARBs as of 2018, the data show that only a small fraction of ARBs are organized, despite the efforts of DAR and CSOs. Establishing farmers’ organizations is very important in pursuing their land rights claims and in accessing support services, as individual ARBs have very limited options.

Unfair and unjust AVAs. Due to the lack of public investment in agriculture, many ARBs were forced to enter into AVAs with the private sector. Many agreements have unfair commodity pricing, inequitable lease rentals, and unconscionable periods which in many cases exceed the life span of the farmers. Arrangements were also entered into by ARBs through coercion, misinformation, deceit, fraud, and threats from other parties involved. These unfair agreements are largely due to the ARBs’ lack of capacity to fully understand, analyze and negotiate the terms and conditions of AVAs on equal footing with investors.

Lack of climate resilient support services programs. As an agricultural country, two-thirds of the Philippine population are directly and indirectly exposed to the impacts of climate change events. Small farmers and ARBs are highly vulnerable to severe weather events (typhoons and droughts), as well as to changes in weather patterns, temperature, water supply that threaten farmers’ productivity, livelihoods and security of homes. The damage to the farmers’ crops runs to the billions of pesos annually but most ARBs have no access to crop insurance and other programs to mitigate the effects of climate change.

¹² DAR Presentation for Organizational Briefing on Senate Committee on Agrarian Reform, 24 August 2016. Data based on ITeMA Monitoring results.

Second generation issues

Indefeasibility of EP/CLOA not recognized by DAR.¹³ There is an increase in CLOA cancellation cases as documented by groups assisting the ARBs. The groups observed that cancellation cases are prevalent with ARBs pursuing their immediate installation. Most of these ARBs received their CLOAs 20 years ago. The landowners filed cancellation cases on the basis of their claim for retention and/or exemption from CARP coverage. Inclusion/exclusion cases were also filed by farmworkers loyal to the landowners who already waived their rights to become CARP beneficiaries when they decided not to participate in the LAD process.

There are also cancellation cases to Distributed but Not Yet Paid (DNYP) lands. Farmers cannot pay their amortization as the paperwork are not properly filed and documented.

Pawning and selling of CARP awarded lands. Many ARBs are forced to avail themselves of production loans from loan sharks at exorbitant interest rates, or pawn or sell their awarded land illegally to pay their debts in cases of disaster or a family emergency.

Subdivision of collective CLOAs. As a strategy to fast-track the LAD process, DAR issued collective CLOAs to cover 2.2 million hectares of agricultural land, and 76 percent of these landholdings were awarded to ARBs who were not actually engaged in collective farming. This has affected farmers' individual property rights and has discouraged farmers from making long-term improvements on the land (Casidsid-Abelinde, 2017). As of December 2017, DAR has a working balance of 1.4 million hectares due for subdivision among individual ARBs.

Based on data of the Land Bank of the Philippines, one of the major reasons for the low collection rate of land amortization is that many land titles distributed to ARBs were collective CLOAs, thus individual amortizations could not be computed.

Ageing farmer population. The average Filipino farmers is 57 years old, and rural populations are ageing, as the youth are discouraged from seeking work in agriculture. Moreover, the existing policy on ARB qualifications is against

¹³ Under Section 9 of RA 9700 (CARPER law), the "indefeasibility" of EPs and CLOAs means that the land titles (EP/CLOA) issued to ARBs under CARPER can no longer be questioned or cancelled after one year from its registration.

younger farmers. RA 6657 states that a landless tiller should be at least 15 years old as of 15 June 1988 to qualify as an agrarian reform beneficiary.

Cross-cutting issues

Rampant illegal land use conversion. DAR data on approved land conversions show that 168,041 hectares of agricultural lands were converted and/or exempted from CARP coverage.¹⁴ However, this does not show the real picture, as there are thousands of undocumented and illegally converted irrigated and irrigable agricultural lands, and the DAR has not been prosecuting violators.

Corrupt and inept DAR officials. There were instances when a group of farmers, mostly unorganized, are seeking assistance from DAR for their concerns; but instead of providing assistance, the DAR officials encouraged them to negotiate with their landowners. In some cases, DAR facilitated the lease and/or leaseback arrangements between the ARBs and investors.

Overlapping land claims. Sector-specific land laws like the CARP Law (RA 6657), IPRA (RA 8371), and the UDHA (RA 7279) – implemented by different government agencies may sometimes overlap, resulting in conflicts over land rights among different sectors of the rural poor. For instance, CLOAs have been issued within ancestral domains, and urban settlements expand to areas still classified as agricultural land. In the absence of a national policy on land use, and with multiple agencies issuing land titles and assigning land rights, there is often confusion and conflict among the basic sectors. The government has tried to harmonize various land laws through dialogues and joint agency mechanisms, but has so far failed.

Governance and coordination. There are several governance mechanisms that are required to have farmer representatives, i.e., the Presidential Agrarian Reform Council (PARC), the National Anti-Poverty Commission (NAPC), and the Land Bank of the Philippines (LBP). The roles of these bodies are mostly on policy formulation and recommendations. It is at the Barangay Agrarian Reform Councils (BARC) where farmers have a direct role in the agrarian reform implementation.

In the past, the DAR and CSOs also formed joint coordination mechanisms – such as an open-door policy and joint task forces. But none of these mechanisms were sustained as they were co-terminus with each DAR administration.

¹⁴ Nationwide converted and exempted/excluded landholdings from 1988 to November 2017. Data from the DAR Bureau of Agrarian Legal Assistance.

Recommendations

- **PARC to formulate a new policy giving DAR a fresh mandate to issue new NOCs, and lobby for the passage of an NOC bill.** The PARC has the power to formulate and implement policies and regulations necessary to implement each component of the CARP. It is within their ambit to give the DAR a fresh mandate to issue new NOCs and the power to correct its “erroneous” NOC issuances to complete land acquisition and distribution. At the same time, the government should work with agrarian reform stakeholders and with Congress for the enactment of a new law that will give DAR a fresh mandate to cover agricultural lands not in the DAR database and or agricultural lands without NOC, and to revive the Congressional Oversight Committee on Agrarian Reform (COCAR).¹⁵
- **Amend/revoke DAR policies that cause delays to CARP implementation.** One policy that needs to be amended or revoked is DAR AO 7, series of 2011 as amended, so that LAD proceedings can continue until ARBs are installed on the awarded land, even if there are pending cases.
- **DAR to install all displaced ARBs and immediately provide initial capital for farm production.** The DAR should immediately install all displaced ARBs on their awarded lands, and provide them security and protection, with the help of the Philippine National Police (PNP) and other agencies.
- **DAR to prosecute CARP violators.** The DAR should start prosecuting CARP violators to show that the government is serious in fulfilling its mandate. Prohibited acts and omissions under Section 73 of RA 6657 as amended include willful prevention and obstruction of CARP implementation, illegal land use conversion to avoid CARP coverage, illegal sale, transfer, conveyance of CARP awarded lands, and the unjustified and malicious act by responsible officers of the government.
- **DAR to address the problem of CLOAs issued within IP lands.** There are cases where DAR issued CLOAs to farmers and migrant-tillers within ancestral domains, despite the prohibition under the existing CARP law. This has caused land conflicts between farmers and indigenous communities. To resolve this issue, DAR should facilitate a negotiated solution between the parties (IPs and ARBs) wherein the farmers should recognize and respect the prior rights of the IP community over their ancestral domain, while the IPs provide tenure security to the ARBs. The ARBs should agree to the cancellation of

¹⁵ According to the DAR, President Duterte has ordered the development of agrarian reform program phase two (2). The DAR was tasked to craft the bill that allows DAR to issue new NOCs.

their CLOAs, but in return, the IPs allow the ARBs to continue tilling the land under usufruct rights, similar to a leasehold arrangement.

- **DAR should seriously implement the leasehold program as an integral component of agrarian reform.** To do this, DAR should: (1) Establish a credible database of all tenanted agricultural lands; (2) Allocate larger budgets to deliver leasehold targets; (3) Execute new leasehold agreements; (4) Open up support services facilities for leaseholders and tenants; (5) Form local monitoring teams; (6) Set up tenant/leasehold assistance desks in DAR municipal offices; (7) Develop IEC materials that the tenants can easily understand; (8) Work with local PO federations or NGOs in organizing the tenants; and, (9) Inform the tenants that they can seek DAR and LBP assistance to exercise their right of pre-emption and redemption. DAR should also review and consider amending the DAR-DoF Joint Memorandum Circular No.1, Series of 1995 that requires the registration of all leasehold contracts with the municipal/city treasurer and the collection of real property taxes. Sources indicate that one reason why most leasehold contracts are not registered with the LGUs is due to the unpaid real property taxes by the landowners.
- **Increase DAR's capability to conduct surveys.** To hasten LAD implementation, DAR should add in-house survey teams and survey equipment to complement the existing survey teams. DAR should explore other methods (e.g. drones), especially in problematic landholdings, to reduce direct confrontation with belligerent landowners and their goons.
- **Institutionalize local and national mechanisms to coordinate LAD and support services delivery.** The government should institutionalize government-CSO mechanisms at the local and national levels to coordinate LAD-related activities and the effective delivery of support services to ARBs. There should be a one-stop shop for all agrarian reform-related engagements – e.g., land surveys, social preparation of ARBs, ARB installation, CLOA registration, and access to support services. The PARC should also review the ARC strategy with the goal of establishing a more effective and inclusive community-based support services delivery program.
- **Introduce livelihood programs for terminated farmworkers due to CARP participation.** There are cases where landowners terminate farmworkers once they are identified as beneficiaries of CARP. Since the LAD process can take one to three years, these farmworkers find themselves unable to provide even the basic needs for their families. Many are discouraged, and some even decide to abandon their land rights claims to be able to return as

farmworkers. In some cases, farmworkers are forced to enter into leaseback arrangements with their landowner, even before getting their land, in exchange for a cash advance. To avoid these from happening, DAR with other CARP implementing agencies should assist farmworkers with livelihood programs as they await their CARP-awarded lands. Their families could also be covered under the conditional cash transfer program of the Department of Social Welfare and Development (DSWD).

- **Implement the support services provisions of RA 6657 as amended, and introduce non-traditional credit programs for ARBs (socialized credit, capitalization of ARBs).** The law allocates 40 percent of all agrarian reform appropriations for support services, of which 30 percent shall be used for agricultural credit facilities – i.e., socialized credit for existing ARBs, and start-up capital for new ARBs. With over 400,000 new potential ARBs, the provision of a start-up capital may also prevent new ARBs from being forced into unfair agribusiness agreements such as leasebacks. The government should also explore non-traditional approaches to credit, such as the early provision of production loans to ARBs at the moment of land transfer. The cost of loan repayment can then be added to the annual amortization.
- **Amend the existing policy governing AVAs.** While private investments address a need, regulation is necessary in order to protect the weaker party to the contract and to ensure that welfare-enhancing outcomes are obtained, to have meaningful impacts on rural poverty reduction. The new policies on AVA should protect ARBs and should regulate or prohibit business arrangements that have unfair commodity pricing, inequitable lease rentals, and unconscionable periods which exceed the life span of the farmers. Already, the current influx of both local and foreign investments has exposed ARBs to indebtedness, and the threat of displacement and loss of control, ownership and possession over their lands.
- **Establish a legal assistance fund for farmers.** Most of the remaining LAD balance consists of private agricultural lands under compulsory acquisition, where agrarian disputes are likely to arise. Thus, the DAR should create an agrarian justice fund for farmworkers/ARBs and include this in the DAR provincial budget to make it more accessible to farmers. The DAR should also re-launch its paralegal support program established in 2004 to address the lack of lawyers. ■

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Vegetable farming in Miarayon, Talakag, Bukidnon.
Photo by Xu-DevCom/XSF.