

Agrarian reform in private agricultural lands

Introduction

SMALLHOLDER farmers are among the poorest basic sectors in the Philippines. About 34.3 percent of farmers are living below the per capita income of USD 33 per month. On the average, smallholder farmers consist of five members and are located in rural areas where farming is the main source of livelihood.

The 2012 Philippine Statistics Authority (PSA) Census of Agriculture reported that there are about 5.56 million farms/holdings¹ covering 7.19 million hectares owned by smallholder farmers. They own an average farm size of 1.29 hectares and a maximum of three hectares of agricultural lands.² However, many who are qualified agrarian reform beneficiaries (ARBs) are still landless and facing land tenure insecurity. Poverty incidence of smallholder farmers is attributed to limited access to productive resources, particularly land, despite existing agrarian reform laws and policies (CARRD, 2017).

The Comprehensive Agrarian Reform Program (CARP)

The 1987 Philippine Constitution, Article XIII Section 4, mandates the distribution of all agricultural land to farmworkers who are landless, subject to reasonable retention limits that respect the rights of small landowners. In 10 June 1988, President Corazon C. Aquino signed into law Republic Act (RA) No. 6657 or the Comprehensive Agrarian Reform Law (CARL). RA 6657 was based on the

¹ A farm/holding is any piece of land used wholly or partly for any agricultural production involved in raising crops, livestock, poultry, and other agricultural activities under single management, and operated as one technical unit by one person alone or with others, regardless of title, legal form, size or location (PSA, 2012 Report).

² Agrarian Reform Beneficiaries may own maximum of three hectares based on Philippine agrarian reform laws.

principles of social justice as well as improving overall economic growth and efficiency of the rural sector. The law aims to improve the lives of the landless farmers and farm workers by providing them access and ownership of agricultural lands, access to support services, and agrarian justice delivery.

The law mandates the Department of Agrarian Reform (DAR) to implement the Comprehensive Agrarian Reform Program (CARP). It authorizes the acquisition and distribution of all public and private agricultural lands, as well as the provision of support services and agrarian justice to ARBs. If qualified, the ARBs are awarded with a maximum of three hectares.

RA 6657 also provides for a landowner's retention ceiling of five hectares of agricultural lands and three hectares each to his/her children who qualify as preferred beneficiaries. In addition, CARP mandates the payment of just compensation to landowners and prohibits the transfer of CARP-awarded lands except through hereditary succession.

In 2009, RA 9700 or the Comprehensive Agrarian Reform Program Extension with Reforms (CARPER) was enacted. RA 9700 instituted several reforms (Quizon, et al., 2018):

- Removing of Voluntary Land Transfer (VLT) and Stock Distribution Option (SDO) as modes of land acquisition;
- Conferring indefeasibility status to land titles (i.e., Certificates of Land Ownership Award or CLOAs, and Emancipation Patents or EPs) issued under agrarian laws;
- Making it easier for ARBs to comply with their amortization payments, by moving back the commencement 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;
- Prohibiting the conversion of irrigated and irrigable lands;
- Increasing penalties for violators of CARP;

- Appropriating at least P150 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 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 the DAR Adjudication Board (DARAB) to the DAR Secretary;
- Creating 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.

Objectives and Methodologies

This sectoral paper provides a status of the agrarian reform implementation in private agricultural lands from July 2016 to June 2022. Specifically, this study: (a) provides updates on the status of accomplishment of CARP as of end of 2022; (b) discusses challenges affecting tenure security of the farmers; and, c) identify courses of action to strengthen the implementation of CARP/CARPER.

This paper involves a review of literature on the analysis of relevant laws, policies and programs that impact on agrarian reform implementation. Inputs from representatives and leaders of farmer and civil society organizations working on agrarian reform and land rights issues were gathered³ and integrated into this paper.

In term of limitation, there is a lack of sex disaggregated data on agrarian reform beneficiaries, and other data on support service delivery and agrarian justice delivery.

³ A focus group discussion with farmers and agrarian advocates was conducted in Bacolod City last 28 July 2023.

Status of CARP Implementation and Related Issues under the Duterte Administration

On Land Acquisition and Distribution (LAD)

Section 4 of RA 6657 enumerates the scope and the lands that covered by the CARP. The succeeding provisions also discuss the retention and ownership ceiling for agricultural lands, and the prioritization of lands for distribution. After more than three decades of CARP implementation, completion of the LAD has not been achieved. The slow-paced implementation has limited the program's potential impact and has given rise to greater challenges in program completion. Bottlenecks in CARP implementation are attributed to budgetary constraints, political factors, and the technical capacities of implementing agencies (Balisacan, 2007). There are also legal disputes relating to coverage and land valuation, landowners' resistance, and harassment. More than 600,000 hectares of private agricultural lands are still undistributed, leaving thousands of potential agrarian reform beneficiaries landless and at the precipice of poverty.⁴

The largest remaining LAD balances are in the Bicol, Eastern Visayas, Western Visayas, and ARMM regions. In Western Visayas, 80 percent of the LAD balance consist mainly of large private plantations in the province of Negros Occidental. In Eastern Visayas, 80 percent of the LAD balance are private lands in the province of Leyte.

Table 1. Land Distribution from 2016 to 2022

| Year | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | Total |
|------------------------------|--------|--------|--------|--------|--------|--------|-------|---------|
| Accomplishment (in hectares) | 22,735 | 28,403 | 28,501 | 23,534 | 14,318 | 10,308 | 7,165 | 134,964 |
| No. of ARBs | 23,965 | 34,572 | 25,613 | 20,621 | 14,529 | 9,077 | 7,729 | 136,106 |

⁴ From the DAR's position paper and presentation on January 2021 to the Committee on Agrarian Reform of the House of Representatives during the hearing of HB 999 (An Act Creating the National Land Reform Authority, Defining its Powers and Functions, and for Other Purposes).

Table 2. Land Distribution Accomplishment by Administration, in hectares (Ballesteros et al., 2017)

| Administration | Accomplishment (in hectares) | Private Agricultural Land (PAL) |
|-------------------------------------|-------------------------------------|--|
| Corazon Aquino (1987 to 1992) | 907,083 | 544,338 |
| Fidel Ramos (1992 to 1998) | 1,671,244 | 839,600 |
| J. Estrada/G. Arroyo (1998 to 2004) | 631,146 | 437,385 |
| G. Arroyo (2004 to 2010) | 658,027 | 384,340 |
| B. Aquino III (2010 to 2016) | 851,641 | 404,929 |
| R. Duterte (2016 to 2022) | 134,964 | No available data |
| Accomplishment (1988 to 2022) | 4,854,105 | 2,610,592 |
| Total CARP Scope | 5,463,827 | 3,173,465 ⁵ |
| Balance | 609,722 | 562,873 |

The Duterte administration did not use its political will and capital to complete the distribution of the remaining private agricultural lands. Most of the remaining balance are private agricultural lands whose landowners have resisted CARP coverage for more than three decades. The total land distribution accomplishment of the DAR from 2016 to 2022 was only 134,964 hectares (PSA, 2019) or an average of 22,494 hectares per year, benefitting 136,106 agrarian reform beneficiaries.

Compared with the achievement of the previous administrations, the Duterte administration grossly underperformed, having the lowest land distribution accomplishment in CARP implementation history. The highest accomplishment was during the administration of former President Fidel Ramos, although this was also during his presidency when the DAR started the distribution of

⁵ DAR Bureau of Land Tenure Improvement Data 2017

Table 3. Status of the leasehold program

| Year | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 | 2022 | Total |
|---------------------------------|------------|------------|--------|--------|--------|--------|--------|---------|
| Accomplishment (in hectares) | 15,398 | 17,728 | 17,086 | 12,760 | 12,382 | 14,669 | 14,056 | 104,079 |
| No. of ARBs | No Data | No Data | 8,959 | 6,724 | 6,816 | 8,257 | 7,486 | 136,106 |

collective CLOAs (CCLOAs) instead of individual titles. The DAR distributed 1,671,244 hectares to landless farmers during the Ramos period. Before Duterte, the lowest accomplishment was during the Estrada/Arroyo presidency with 631,146 hectares. With 88.8 percent of LAD accomplished (4,854,015 hectares of the total land scope of 5,463,827 hectares distributed from 1988 to 2022), Ferdinand Marcos, Jr.'s administration still needs to complete the distribution of 609,722 hectares,⁶ 92 percent of which are private agricultural lands. It is important to note that the LAD balance as of June 2022 is higher than the balance in 2016. If the Marcos Jr. administration targets LAD completion until 2028, it needs to distribute 101,620 hectares per year.

Table 4. Status of Women ARBs

| Data Set | Women | | Men | | Total |
|---|---------|---------|-----------|---------|-----------|
| | Number | % Share | Number | % Share | Number |
| Total Number of ARBs | 711,369 | 29.5 | 1,700,790 | 70.5 | 2,412,159 |
| Total Number of ARBs with Emancipation Patent | 57,424 | 13.8 | 358,281 | 86.2 | 415,705 |
| Total No. of ARBs with CLOA | 653,945 | 32.8 | 1,342,509 | 67.2 | 1,996,454 |

⁶ Land acquisition and distribution scope under CARP is always changing due to various policy issuances, court decisions, etc. That explains the bigger LAD balance as of 2022 compared to 2016 LAD balance.

Status of the Leasehold Program. RA 3844⁷ provided for the protection of the rights of tenant farmers by ensuring their right to a home lot, and outlawing share tenancy in favor of leasehold arrangements. DAR accomplishment reports showed that the agency exceeded its leasehold targets with 1.2 million tenant farmers in 1.8 million hectares (DAR, 2017). Despite this, circumstances still indicate that the leasehold program has been neglected by the DAR (DAR, 2017). Pressing issues surrounding the program are the lack of comprehensive data on leasehold target landholdings and yearly accomplishments, lack of data on support services accessed by the tenant farmers, and unavailed pre-emption and redemption rights⁸ of tenants that they, and sometimes, even DAR field personnel are unaware of. From 2016 to 2022, the DAR reported facilitating leasehold contracts of more than 55,000 tenants covering 104,108.23 hectares.⁹ The report did not state if the leasehold accomplishments are new or merely renewals of existing leasehold agreements. A majority of the leasehold agreements are not registered with the local government units (LGUs) which existing policy on leasehold requires.

Status of women's land rights. The last available information is still the DAR 2015 data which reveals that only 29.5 percent of the 2.4 million ARBs are women. Moreover, women compose only 13.8 percent of ARBs with EPs and 32.8 percent of ARBs with CLOAs.

On Program Beneficiaries Development (PBD)

Support Services provided by the DAR. To uplift the economic status of the farmers, land distribution should be coupled with support services that will enable the ARBs to at least begin to improve their agricultural production. With sufficient social infrastructure and capacities, the ARBs will be more able to

⁷ R.A. 3844 or the Agricultural Land Reform Code is the primary law on tenancy and leasehold.

⁸ 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.

⁹ DAR Annual Physical Report of Operations 2016 to 2022

defend themselves from vested interests.¹⁰ With tenurial security, the ARBs are also more prepared, confident and empowered to venture into investments and enterprises whether as individuals or members of an organization or a cooperative.

Under its PBD thrust, the DAR has various programs extending support to ARBs. The Agrarian Reform Beneficiaries Development and Sustainable Program (ARBDSP) provides for a comprehensive mechanism to assist ARBs. It has four components:¹¹ (1) Social Infrastructure Building [SIB]; (2) Climate Resilient Farms [CRF]; (3) Enterprise Development and Economic Support [EDES]; and, (4) Basic Essential Social Services Access Facilitation and Enhancement [BESSAFE]. The ARBDSP program aims to achieve enhanced productivity for ARBs; increased investments for agrarian based enterprises; strengthened ARB organizations (ARBOs) that are managing competitive and profitable agriculture-based enterprises; and, increased incomes for ARBs and their families with sustained tenurial security over their awarded lands.¹²

To implement its 2021 to 2024 Support Services Office (SSO) Road Map, the DAR is focusing on ARBO organizing and development. It targets to conduct and accomplish the following by 2024:¹³ (1) to organize 1,000 new ARBOs particularly those in newly distributed lands, estimated to be around 12 to 15 ARBOs for every province; (2) to organize potential ARBs prior to the issuance of their CLOAs; and, (3) to federate ARBOs and mobilize collective support for enterprise development, marketing, capacity development, and common advocacies among others.

¹⁰ Id.

¹¹ DAR's SSO 2021 to 2024 Strategic Road Map presented during the ARDKPP UNDF-PAP4FF Online Launching held on 21 July 2021.

¹² Id.

¹³ Id.

Status of ARBs, ARBOs, and ARCs.¹⁴ Based on the DAR's 2021 to 2024 SSO Roadmap, 1.7M ARBs or 60 percent of the 2.9 million ARBs need access to various support services such as capacity building, pre- and post-harvest infrastructure, financial assistance through grants, subsidies, and loans, and access to market. Provision of support services to ARBs is through organization but there are only 6,293 existing ARBOs in the DAR database. Large number of ARBs are not part of organizations, thus limiting their access to the support that they need.

One of the key strategies of DAR to provide comprehensive support services to ARBs is the establishment of Agrarian Reform Communities (ARCs). As of 2021, there are 2,234 ARCs but only 805 ARCs have been able to receive assistance from the DAR. According to DAR, this is because of the limited budget allotted to DAR for support services delivery.

For 2021 to 2024, DAR targets to provide support services to 1,732,456 ARBs. Establishment of 2,985 new ARBOs with estimated membership of 212,926 ARBs is also part of the roadmap target. For ARC, the roadmap targets the provision of comprehensive support services to the remaining 1,429 ARCs who did not receive comprehensive support services in the past.

Other Existing Programs and Mechanisms.¹⁵ The DAR in coordination with other government agencies have existing programs on agricultural production, credit assistance, and insurance. These include: DAR's Agrarian Production Credit Program (APCP), Accessible Funds for Delivery to ARBs (AFFORD), Assistance to Restore and Install Sustainable Enterprises for ARBS and Small Farm Holders (ARISE); DA's Capital Loan Easy Access (CLEA), Agri-Negosyo Program (ANYO), Kapital Access for Young Agripreneur (KAYA), Agriculture and Fisheries Machinery and Equipment Loan (AFME); and, the Crop Insurance Program

¹⁴ Powerpoint presentation of DAR's SSO 2021 to 2024 Strategic Road Map, reported during the ARDKPP UNDFP-PAP4FF Online Launching held on 21 July 2021.

¹⁵ Culled from DAR's PowerPoint presentation on their updates and responses to ILC-NES' comments and concerns on the SPLIT project during an online dialogue held on 29 June 2021.

Table 5. Agrarian Justice Delivery Accomplishment from 2016 to 2022

| Year | ALI Caseload | ALI Accomplishment | DARAB Caseload | DARAB Accomplishment |
|--------------------|----------------|--------------------|----------------|----------------------|
| 2016 | 42,723 | 31,966 | 28,149 | 19,355 |
| 2017 | 44,013 | 29,623 | 32,312 | 22,606 |
| 2018 | No Data | No Data | No Data | No Data |
| 2019 | 41,131 | 37,434 | 28,394 | 26,784 |
| 2020 | 31,947 | 31,840 | 22,759 | 22,340 |
| 2021 | 36,052 | 34,040 | 23,433 | 22,859 |
| 2022 | 17,110 | 16,298 | 23,318 | 22,949 |
| Total | 212,976 | 181,201 | 158,365 | 136,893 |
| Percent (%) | 100 | 85 | 100 | 86.5 |

implemented by the DAR and DA-Philippine Crop Insurance Corporation (DA-PCIC).

The DAR also implements its PBD lawyering program aimed at providing capacity building to ARBs and ARBOs related to contract negotiation, business coaching, managing credit, and other skills and information needed to effectively engage in agricultural businesses and investment activities.

Status of Agribusiness venture agreements (AVAs). In DAR records, there are 433 registered and approved AVAs, and most of these involve ARBs leasing out their awarded lands. Several ARBs were forced to engage in agribusiness ventures with the private sector due to lack of public investments in agriculture and the difficulty in accessing government’s support services. Reports also indicated former landowners offer to lease back lands prior to formal turnover

¹⁶ Based on the focus group discussion with farmers and agrarian reform advocates conducted on 28 July 2023 in Bacolod City.

of CLOA to ARBs.¹⁶ Thus, it is imperative to make AVA policies more protective of ARBs.

On Agrarian Justice Delivery (AJD)

The implementation of CARP has been contentious and problematic, especially with regards to acquiring private agricultural lands. 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. ALI cases are cases filed in relation to the implementation of CARP, especially regarding the land acquisition and distribution process, such as protests relating to coverage, exemption, inclusion, exclusion, disqualification of potential FBs, retention, land use conversion, among others. The Department of Agrarian Reform Adjudication Board (DARAB) has original and exclusive jurisdiction of the determination of just compensation, ejection of tenants, fixing of lease rentals, annulment of lease contracts, pre-emption and redemption, boundary disputes, collection of amortization and foreclosure, agrarian disputes, among others.

Under the Duterte administration (2016 to 2022), the DAR reported 181,201 cases or 85 percent of ALI cases as resolved. DARAB reported 136,893 cases or 86.5 percent of their caseload resolved.¹⁷

The role of the DAR in delivering agrarian justice is not merely quasi-judicial. The agency is mandated to file complaints against individuals or groups who are delaying, evading, or unjustly resisting CARP, but there is no reported case or information about DAR filing complaints against CARP violators.

¹⁷ DAR Report, 2016 to 2022

Issues and Challenges

On Land Acquisition and Distribution (LAD)

LAD Completion. The completion of LAD remains one of the major issues confronting the agrarian reform program. In the meantime, the distribution of lands with NOCs, mostly private agricultural lands, continue to proceed at a snail's pace. The slowest pace was during the term of former President Rodrigo Duterte. The period started on a high note, with the appointment of a progressive DAR Secretary Rafael Mariano. Sec. Mariano issued a progressive policy - DAR Administrative Order No. 5, series of 2017 - that was supposed to fast-track the acquisition and distribution process. Unfortunately, Sec. Mariano's term was cut short when the powerful Commission on Appointments (CA) rejected his appointment. Mariano's successor immediately suspended AO 5 and replaced it with AO 6, series of 2017 that further delayed the completion of LAD.

The Non-issuance of NOCs, and Erroneous NOCs. For private agricultural lands, the issuance of the NOC initiates the LAD process. It informs the landowners that his/her landholding is covered under CARP. Upon receiving the NOC, landowners are apprised of remedies available to them such as protesting the coverage, nominating their preferred beneficiaries and/or exercising their retention rights. Only after the issuance of the NOC will other steps of the LAD process be allowed to proceed.

The inability of DAR to issue NOCs has retarded CARP's completion significantly. DAR failed to issue NOCs for thousands of landholdings covering more than 206,000 hectares (DAR, 2016, as cited in Quizon, et al., 2018). Moreover, the agency has classified some of their issued NOCs as "erroneous"¹⁸ for varying reasons, and has removed these from its LAD targets. In many cases, erroneously issued NOCs require re-issuance of NOC and this cannot be done given the DAR's legal opinion that Sec. 30 of RA 9700 limits its authority to cover

¹⁸ Erroneous NOC means NOC that is inaccurate or contains typographical or clerical or substantial error.

lands without valid NOC or to cover lands not subject of a pending case as of 30 June 2014.

There were attempts by DAR to address these issues through new policy issuances. However, these provide remedies only to landholdings with pending cases but not covered by NOCs, and to some NOCs classified by DAR as “erroneous” that are the subject of technical issues.

“Problematic” landholdings delisted from the LAD target. There are landholdings with valid NOCs that were removed from the list of LAD targets because DAR classified these as “problematic.” The process of delisting is arbitrary, without farmers knowing that the lands they were claiming were delisted, and there are no clear parameters on what DAR considers “problematic landholdings.” Based on farmers’ group observations, DAR delists landholdings with incomplete documentation, strong landowner resistance, those with “erroneous” NOCs, and those with pending cases, among others.

Constant change in DAR leadership and incompetent DAR officials. The quick turnover of local DAR officials, particularly the Municipal Agrarian Reform Program Officers (MARPOs) has impacted the LAD process. This has resulted in the lack of proper turnover of tasks, cases, and documents which results in further delays, as the new officials need time to study the pending cases. Also, many of the new officials are not familiar with the LAD process, and some are in connivance with the landowners.

The constant change in DAR leadership has confused field implementors because of variances in policy issuances. There were instances where local DAR officials refused to implement certain policies due to lack of clarity. There were also instances where DAR officials did not implement policies, especially those that are favorable to farmers because they feared the landowners.

Inequitable access to land by landless women farmers. Despite existing laws (RA 9700 and RA 9710 or the Magna Carta for Women) and administrative issuances, data shows that rural women still lack equal rights to own, manage

and control land. This is 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.

On Program Beneficiaries Development¹⁹

Lack of adequate and necessary support to ARBs. One of the main issues raised by farmers and agrarian reform advocates since the enactment of CARPER is inadequate provision of support services to ARBs. ARBs lack capitalization for cultivating their awarded lands. Many of them face constraints in gathering resources (cash, farm input, implements, and machineries) to sustain their farming activities.

Based on 2018 data, only 53 percent of existing ARBs had access to a package of support services while remaining ARBs have availed only of specific support services. The problem lies in the mechanisms to access support services from national to local level. With the devolution of powers of the Department of Agriculture's (DA) service delivery to Local Government Units (LGUs), very limited funds were allocated to agriculture extension.

ARBs with limited access to market. In addition to the productivity issues, ARBs are facing challenges in pricing and linking with markets for their agricultural products. These problems are exacerbated by the influx of foreign products in local markets, which compete with those of local farmers.

Inadequate provision of initial capital and socialized credit to ARBs. RA 9700 mandates the provision of initial capitalization to new ARBs and socialized credit to existing farmer owners of CARP-awarded lands. These reforms are stipulated in Sections 35 to 38 of R.A. 6657 as amended. The support services component however, remains underfunded despite its institutionalization in the law. ARBs with minimal to no support services from the government are exposed to vulnerabilities that threaten their hold over their lands. Comprehensive,

¹⁹ Based on the focus group discussion with farmers and agrarian reform advocates conducted on 28 July 2023 in Bacolod City.

effective, and efficient delivery of support services to ARBs will make 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 these lands.

Unfair and unjust private investment in agriculture. With funds to support the ARBs being either inadequate or inaccessible, the former are forced to engage in unfair and unjust agribusiness ventures with the private sector. Many ARBs were deceived to accept the terms of AVAs because these were not written in a language they understand. Investors engage in unfair agribusiness models are also more accessible to ARBs than the government. They employ local agents, sometimes DAR officials, to convince the ARBs to enter into lease agreements.

Lack of climate-smart 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, and water supply that threaten productivity, livelihoods, and security of homes. The damages to the farmers' crops are in the billions of pesos annually, but most ARBs have no access to crop insurance and other programs to mitigate the effects of climate change.

On Agrarian Justice Delivery

There is renewed resistance among landowners, who resort to filing 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 were decided cannot be determined from existing data. Accomplishments refer to the number of decisions and actions taken on cases, rather than on whether the specific land disputes were permanently resolved. However, disputes may reoccur on the same property, or past cases may be reopened.

Non-recognition of farmer's legal standing. There are reported cases of farmers who are not aware that the lands they are claiming under CARP are the subject

of protests or applications for land use conversion. The DAR officials concerned are aware that there are qualified farmer beneficiaries that will be affected by these protests or conversion applications but they do not inform the farmers, nor ask them to comment on the petitions.

DAR's failure to file complaints against individuals/groups resisting CARP implementation. One of the major issues why LAD of private agricultural lands is not yet complete after more than three decades is the inaction of DAR against individuals and/or groups who are delaying and evading CARP implementation and preventing DAR from performing its tasks.

Cases filed protesting CARP coverage to derail the LAD process. Numerous cases questioning CARP coverage such as but not limited to exemption, exclusion, land use conversion, were filed by the landowners since the issuance of DAR Administrative Order No. 7, series of 2012 which limits the LAD process to issuance of Memorandum of Valuation (MOV) if a landholding is subject of a protest questioning CARP coverage. Many of these cases were filed beyond the prescriptive period and are meant to derail and delay CARP coverage. Landowners did not immediately question the process when they were notified when they received the NOC that their land will be covered under CARP. AO 7 is a self-limiting policy and contrary to Sec. 20 of RA 9700 which states that only the Supreme Court can stop CARP implementation.

Limited legal assistance to ARBs and to DAR officials performing their mandate. In practice, 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 costs of litigation. Meanwhile the legal staff in local DAR offices appear unable to cope with the growing caseload, especially in provinces with high LAD balances and strong landowner resistance.

Other cross-cutting issues

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

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

Rampant illegal land use conversion. DAR data on approved land conversion shows that 168,041 hectares of agricultural lands were converted and/or exempted from CARP coverage.²⁰ However, this does not reveal the whole picture, as there are thousands of undocumented and illegally converted irrigated and irrigable agricultural lands, and DAR has not been prosecuting violators.

Overlapping land claims. Sector-specific land laws like the CARP Law (RA 6657), the Indigenous Peoples Rights Act (RA8371), and the Urban Development and Housing Act (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. Government has tried to harmonize various land laws through dialogues and joint agency mechanisms, but has so far failed.

²⁰ Nationwide converted and exempted/excluded landholdings from 1988 to November 2017. Data from the DAR Bureau of Agrarian Legal Assistance.

Emerging Opportunities?

New Agrarian Emancipation Act (NAEA). RA 11953 “An Act Emancipating Agrarian Reform Beneficiaries from Financial Burden by Condoning All Principal Loans, Unpaid Amortization and Interests and Exempting Payment of Estate Tax on Agricultural Lands Awarded under the Comprehensive Agrarian Reform Program” or the “New Agrarian Emancipation Act” was enacted by President Ferdinand Marcos, Jr., in 7 July 2023.

RA 11953 is a watered-down version of the more progressive emancipation bill advocated by the agrarian reform and rural development (ARRD) groups. The ARRD groups supported free land distribution to present and future ARBs, but RA 11953 limits the scope to ARBs awarded land titles upon the effectivity of the law. In effect, the ARBs who have not received their land will still have to pay for land amortization. The proposed provision on comprehensive support services for ARBs and direct support to ARBs who already paid their land amortization in full, was not included in the law. The condonation of unpaid real property taxes of ARBs was also advocated by ARRD groups, unsuccessfully.

But even if RA 11953 is not ideal, the ARBs can still benefit from the law. According to DAR data, it will result in the condonation of unpaid land amortizations of more than 600,000 ARBs including the amortizations of those under the questionable Voluntary Land Transfer scheme. It mandates the condonation of all individual loans of ARBs, including penalties and surcharges, secured under CARP or from other agrarian reform laws or programs, provided that the indebtedness is with the government.

DAR Memorandum Circular (MC) 226. Section 55 of RA 6657, as amended, expressly states that “Except for the Supreme Court (SC), no court in the Philippines shall have jurisdiction to issue any restraining order or writ of preliminary injunction against the PARC, the DAR, 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.”

To operationalize Section 55, former DAR Secretary Rafael “Paeng” Mariano issued Administrative Order 5, series of 2017. Under AO 5, any pending petition or protest of coverage, exemption, or exclusion shall not stop the completion of the LAD process up to successful ARB installation, unless otherwise suspended by the Secretary through a cease and desist order (CDO) or status quo order or by the Supreme Court thru temporary restraining order (TRO) or preliminary injunction.

But in September 2017, the powerful Commission on Appointments rejected the appointment of then DAR Secretary Mariano. Subsequently, OIC Secretary Rose Bistoyong issued Administrative Order 2, series of 2018 suspending the implementation of AO 5. In 2020, DAR issued AO 2 that limits the LAD process up to the issuance of land title to the Republic of the Philippines for landholdings with pending cases.

Farmers and agrarian reform groups pushed for the re-instatement of AO 5, series of 2017 and for DAR to uphold Section 55 of RA 6657, as amended.

To address the clamor of the farmers, the DAR issued Memorandum Circular 226, series of 2023 or Continuation of LAD or Completion of LAD Process Notwithstanding the Presence of ANY Protest/Pending Action.

However, MC 226 that may still cause further delay in LAD completion especially if the DAR Secretary is not pro-farmer. Giving the Secretary the discretion to suspend the LAD process thru a CDO or Status Quo Order is another case of DAR limiting its own power and authority to fulfill its mandate of LAD completion.

However, MC 226 states that in all instances, only the SC, upon the issuance of a TRO, can suspend the LAD process pending the final resolution of the case regardless of the stage in the appellate procedure.

Support to Parcelization of Land for Individual Titling (SPLIT). As a general rule, R.A. 6657 as amended by R.A. 9700 provides that titles to be awarded to ARBs should be in the form of individual titles.²¹ ARBs may opt for collective ownership pursuant to conditions allowed under the law.

CCLOAs were predominantly awarded to ARBs in the mid-1990s (Delos Reyes, et al., 2016) during the early years of CARP implementation. The issuance of CCLOAs, thought as an interim measure prior to award of individual titles, became a means to fast track the LAD and the award of titles to ARBs.²² In the course of the LAD implementation however, parcelization of CCLOAs suffered delays or worse, were not processed to become individual titles. These were primarily due to two reasons:²³ (1) the issuance of CCLOAs was already reported by DAR as an accomplishment, leaving little incentive for its field offices to process individual CLOAs; and, (2) lack of funding for surveying land and subdividing CCLOAs to individual titles.

In March 2019, the DAR issued AO 2 Series of 2019 or the Guidelines and Procedure on the Parcelization of Landholdings with CCLOAs. Through subdivision and issuance of individual titles, the DAR endeavors to stabilize and secure the ownership, control, and hold of the farmers over their lands.²⁴

In November 2020, the DAR launched its Support to Parcelization of Lands for Individual Titling (SPLIT) project (Mayuga, 2020). The SPLIT is a four-year project (2020 to 2024) funded by the World Bank targeting a total area of 1,368,883 hectares of agricultural land covered by collective CLOAs and seeks to benefit

²¹ Section 25 of RA 6657 as amended by RA 9700.

²² *Id.*

²³ *Id.*

²⁴ DAR AO 2 series of 2019.

1,140,735 ARBs (Mayuga, 2020). It will be implemented in 78 provinces in 15 regions across the country (Mayuga, 2020). This project aims to expedite the subdivision of collective titles issued to ARBs and address the roadblocks to their full exercise of ownership over their awarded lands.

The parcelization and issuance of collective CLOAs will address one of the long-time roadblocks encountered by ARBs who are willing and able to pay amortization but cannot do so because their lands are covered under collective ownership. With individual titles, the DAR will be able to identify the specific area allotted to each ARB. In turn the Land Bank of the Philippines (LBP) will have sufficient basis to compute the amortization schedules of the CLOA holders and consequently, the ARBs will be able to comply their obligations as landowners. Obtaining individual CLOAs will also pave the way for agricultural investments.²⁵ Farmer-owners will be able to maximize their greatest asset – their land – in financing, expanding, and increasing their production. They may use their lands as collateral for loans to avail of credit and financing support from the government and other financing institutions.²⁶ After the required 10-year holding period of CARP-awarded lands and full payment of amortization,²⁷ CLOA holders, if they choose to do so, may sell, lease or convey possession and/or ownership of their awarded lands to others individuals or entities.²⁸

Nonetheless, ARBs under CCLOAs should have the choice to refuse coverage under the SPLIT project. Meanwhile, efforts should be made to organize ARBs involved in the SPLIT project, to encourage collective farming and marketing, and to enable them to access support services.

²⁵ Paragraph 11 of World Bank's Project Information Document on the SPLIT; HYPERLINK "https://ewdata.rightsindevelopment.org/files/documents/99/WB-P172399_ZjQ4FQ9.pdf"WB-P172399_ZjQ4FQ9.pdf (rightsindevelopment.org); accessed on 4 August 2021.

²⁶ Id.

²⁷ Section 27 of RA 6657 as amended by RA 9700

²⁸ Paragraph 11 of World Bank's Project Information Document on the SPLIT; HYPERLINK "https://ewdata.rightsindevelopment.org/files/documents/99/WB-P172399_ZjQ4FQ9.pdf"WB-P172399_ZjQ4FQ9.pdf (rightsindevelopment.org); accessed on 4 August 2021.PP

Other Effective Area-Based Conservation Mechanisms (OECMs) to protect local farming communities. OECM is defined as a geographically defined area other than a Protected Area, which is governed and managed in ways that achieve positive and sustained long-term outcomes for the in-situ²⁹ conservation of biodiversity, with associated ecosystem functions and services and where applicable, cultural, spiritual, socio-economic, and other locally relevant values (Convention on Biological Diversity, 2018).

Identification of OECMs offers a significant opportunity to increase recognition and support for de facto effective long-term conservation that is taking place outside currently designated protected areas under a range of governance and management regimes, implemented by a diverse set of actors, including by indigenous peoples and local communities, the private sector, and government agencies (IUCN, n.d.).

Non-IP farming communities who are still awaiting completion of the LAD process can introduce another layer of protection to prevent land use conversion attempts by working on the declaration of the land as locally conserved areas. There is an opportunity for land rights groups to influence the policy on OECMs as the Department of Environment and Natural Resources is conducting a nationwide consultation on the draft administrative order on the identification and recognition of OECMs.

Recommendations³⁰

On Land Acquisition and Distribution

Prioritize LAD completion of private agricultural lands. President Marcos, Jr.'s administration needs to complete the distribution of 609,722 hectares,³¹ 92

²⁹ The conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

³⁰ Based on the focus group discussion with farmers and agrarian reform advocates conducted on 28 July 2023 in Bacolod City.

³¹ LAD scope under CARP is always changing due to various policy issuances, court decisions, etc. This explains the bigger LAD balance as of 2022 compared to 2016 LAD balance.

percent of which are private agricultural lands, to fulfill the constitutional mandate to distribute all agricultural lands to landless farmers. The DAR must have the financial resources and personnel to distribute 112,000 hectares of private agricultural lands annually to be able to cover the remaining private agricultural lands by the end of the current administration.

DAR to stop issuing policies that will further delay CARP Implementation. The DAR continually issues policies that restrict their own work and further delays the completion of LAD. Examples of these are the DAR Administrative Order No. 7, series of 2011 which limits the LAD process for landholdings with pending case to MOV and Administrative Order No. 2, series of 2020 which limits the process up to issuance of Republic of the Philippines title if there is a pending protest.

DAR to immediately install all displaced ARBs and 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. Since these ARBs were displaced and therefore have limited income, the provision of initial capital to jumpstart farm productivity is a must.

Ensure women's land rights are recognized and protected by increasing local DAR's awareness on the equal rights of women farmers under CARP and to introduce gender-based key result areas to ensure that there are funded programs that promote women's land rights and regular monitoring and reporting of accomplishments are conducted.

DAR to seriously implement the leasehold program as an integral component of agrarian reform. 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 preemption and redemption.

On Program Beneficiaries Development

Support services should be comprehensive, need-based, and climate-smart.

Support services to ARBs should aim for economic empowerment of ARBs through increased farm productivity, market access, and income. This can only happen if the government provides a comprehensive package of support services that is appropriate to needs of ARBs. Support services must be climate-smart as agricultural practices can have significant impacts on biodiversity. By implementing sustainable agricultural practices, farmers can conserve biodiversity by preserving and restoring natural habitats, protecting native species, and avoiding the use of harmful chemicals that can harm ecosystems. At the same time, there is a need to introduce concrete programs/incentives to encourage the rural youth to engage in farming.

Full implementation of the support services provisions of RA 6657 as amended including the provision of gender-responsive support services. The law allocates 40 percent of all agrarian reform appropriations for support services, of which 30 percent shall should be used for agricultural credit facilities – i.e., socialized credit for existing ARBs, and start-up capital for new ARBs. For new ARBs, the provision of a start-up capital will prevent them from resorting to unfair agribusiness agreements such as leases and 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.

For women ARBs, DAR should religiously implement AO No. 9, series of 2011 or the Guidelines governing gender equality in the implementation of agrarian reform, laws and mainstreaming gender and development in the DAR.

On Agrarian Justice Delivery

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 ensure that the legal standing of farmers and ARBs is recognized and respected. DAR must ensure that the farmers and/or ARBs are informed about any petition that may deprive them of their land tenure including CARP exemption/exclusion, cancellation of EPs/CLOAs, land use conversion, and cases of inclusion, exclusion or disqualification as CARP beneficiary. DAR must consider the farmers/ARBs as party to these cases especially if the petitioners do not include them. ■

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