

National Updates on Agribusiness Large Scale Land Acquisitions in Southeast Asia

Brief #4 of 8: Republic of the Philippines

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Introduction

Strategically located near the equator, the Philippines is one of the countries of the Southeast Asia region blessed with an abundance of natural resources. Its arable land and climate are conducive to growing agricultural crops that can provide for the needs of its population and support the country's thriving economy. While agriculture has been the Philippines' traditional lifeline since the Spanish Regime, the sector suffered a breakdown and lagged behind its Asian neighbours due to years of political neglect. More than fifty years ago, agriculture represented

40.4% of the Gross Domestic Product (GDP) of the Philippines, but by 2004 this had declined to 18.8%¹ and by 2011, agriculture only contributed a measly 11% to the economy.²

This downward trend has forced the government to rethink its strategy and open up more opportunities in agriculture. During the term of President Gloria Macapagal Arroyo, vast areas of agricultural and forestlands were allocated to agribusiness to cater to the growing demand for food crops and biodiesel

production, largely fuelled by the global need to address climate change. This has continued up to the present where the administration of President Benigno Aquino III has also put emphasis on agribusiness as one of the drivers for economic development.

Several wealthy countries have already made a deal with the government of the Philippines to produce various agricultural crops for export and many more are in the pipeline. Certain sources suggest that some of these deals may have been brokered on the ground without passing through the government,³ while substantial literature suggests that agribusiness can foil the gains made by the agrarian reform in the country and can cause further disillusionment in rural areas. This premise has been supported by evidence compiled by non-governmental organisations (NGOs) against agricultural corporations that operate with the objectives of profit, but with blatant disregard for the welfare of local communities.⁴

National trends in Large Scale Land Acquisitions

Government policies and targets for agribusiness expansion

With a total land area of 30 million ha, the Philippines' economy is banking on its natural resources to lift its economic status and achieve its development goals. Of the land area above, 47% or 13 million ha are classified as agricultural lands. These lands can be further divided into land devoted to food grains (4.01 million ha), food crops (8.33 million ha) and non-food crops (2.2 million ha). These figures give some idea of the scale of land available for agriculture in the country.⁵

Agribusiness is another sector, aside from mining, that is in the limelight due to its potential earnings for the country. The

Philippines' leading products are agricultural in nature, such as coconut, banana and sugar.⁶ In January 2013, the National Statistics Office noted that over 1.15 million Filipinos were employed in the agricultural sector in the first month of this year alone.⁷ This is second after services, which employed around 2.05 million individuals in the same period.⁸ About 56.4% of poor households are engaged in agriculture⁹ and this is the primary reason why the government is focusing its attention on agribusiness as its development priority for poverty alleviation.

The majority of laws and policies in the Philippines to promote agribusiness were already in place even before the food crisis erupted in 2009,¹⁰ facilitating the entry of Foreign Direct Investment (FDI) and turning the balance in its favour.

For instance, the Foreign Investments Act of 1991 (amended by RA 8179 in 1996) liberalised the entry of foreign investments into the country by relaxing restrictions on the participation of foreigners as equity shareholders in local firms.¹¹ As a result, the country has opened up its doors to joint ventures between Philippine-owned corporations and foreign entities.

In terms of landholdings, Republic Act (RA) 7900, otherwise known as "An Act to Promote the Production, Processing, Marketing and Distribution of High-Valued Crops, Providing Funds Therefore, and for other Purposes", allows farmer-cooperatives to lease out up to 1,000 ha of their lands for a period of 25 years. This gives much leeway to agribusiness ventures to deal with cooperatives rather than individual farmers.¹²

This Act is further supported by the Department of Agrarian Reform (DAR) Administrative Order (AO) 9 series of 2006, which guides the investments on agricultural lands covered by the

Comprehensive Agrarian Reform Programme (CARP). The DAR AO identifies a number of agribusiness venture agreements from which the agrarian reform beneficiaries can choose, such as the: (1) joint venture agreements, (2) Production/Contract Growing/Growership, (3) Marketing Contracts, (4) Lease Agreement, (5) Management Contracts, (6) Service Contract and (7) Build-Operate-Transfer.

As a signatory to the Kyoto Protocol, the Philippines also passed the Biofuels Act of 2006 (RA 9367) which aims to phase out harmful gasoline additives and/or oxygenates and mandates the use of biofuels. This has led to the development of biofuel plantations in the country, particularly in Mindanao, ironically converting mixed used lands into monoculture plantations of sugarcane, cassava, sweet sorghum and jatropha.¹³ Around 1.37 million ha are currently being targeted for the production of agro-fuels to satisfy the objectives of the Act.¹⁴

Moreover, demand for other crops such as oil palm is also expected to increase in coming years¹⁵ as well as that for rubber, coffee and food crops. Among the targeted areas for expansion are those lands awarded by the government to Agrarian Reform Beneficiaries (ARBs) and Certificates of Ancestral Domain Titles (CADTs), including forest areas such as those under Community Based Forest Management (CBFM), the Integrated Social Forestry Program (ISFP) and the Socialised Forest Management Agreement (SIFMA) and other privately titled lands, as well as public lands under the jurisdiction of Local Government Units (LGUs).¹⁶

The combined demand for food, feed and fuel was used by the government to target “idle lands” for agribusiness development. In the 2004-2010 Philippine Medium Term Development Plan, the government of

former President Arroyo targeted 2 million ha for agribusiness projects that would generate 2 million jobs. Although the succeeding administration of President Aquino did not indicate any clear target in its 2010-2016 Philippine Development Plan, it has likewise adopted the former government’s direction on agribusiness and is expected to gain grounds in terms of foreign investments.

Areas for expansion will likely be dictated by the demand for specific products. According to the Department of Agriculture, which implements the Biofuels Feedstock Programme, to meet the required blend for biodiesel by 2014, jatropha must be planted on an additional 132,000 ha while 372,917 ha are needed for coconut. For bioethanol, there is also a need for another 118,022 ha of sugarcane, 372,917 ha of cassava and 107,400 ha of sweet sorghum for the same year.¹⁷ These account only for local demand and not the demand coming by other countries, such as China, which is said to be looking for some one million hectares for jatropha plantations for its agro-fuel requirements.¹⁸

To consolidate its efforts for expansion, five government corporations are tasked to increase their involvement in the agribusiness sector. The Philippine Agricultural Development and Commercial Corporation (PADCC) is responsible for agribusiness investment promotion, facilitation, and project development. It is the lead agency in agribusiness investments and provides assistance to both local and foreign clients by way of investment matching through land identification and consolidation of idle/underutilised land.

The Philforest Corporation, on the other hand, a government-controlled corporation and wholly-owned subsidiary of the Department of Environment and Natural Resources (DENR), is responsible for forging investments on public lands,

particularly those categorised as “untenured” and idle lands. Untenured lands are lands that are not covered by any tenure instruments but are nevertheless occupied by people.

The Philippine National Oil Company-Alternative Fuel Corporation (PNOC-AFC) also initiates biofuels feedstock production while the Land Bank of the Philippines (LBP) and the Development Bank of the Philippines (DBP) serve as the financial arms for these projects.

Gross areas allocated to agribusiness

According to government statistics, around 1.83 million ha were developed into agribusiness and agroforestry areas during the period 2005-2010, generating employment for 2.67 million Filipinos through the National Convergence Initiative.

The last two years alone (2009-2010) account for 22% of the total areas developed by the government for these ventures.¹⁹ It is not clear however, how many agribusiness companies have benefited from these lands and under what type of crops, due to the absence of accurate government data. However, it is widely believed that the majority of these transactions have the backing of foreign governments.

In Mindanao, the Department of Agriculture registered at least 310,000 ha of lands developed for agro-fuel cultivation under eight companies in 2009.²⁰ This constitutes around 82% of land developed for agribusiness in that year for the entire country. Still in Mindanao, around 54,748 ha of lands were cleared for oil palm plantations in 2011 and it is projected that an additional 1 million ha will be needed for oil palm from 2011-2022 at the country level of which half will be located in that same island.²¹

For food crops, the Philippine Government has entered into joint venture, lease or corporate farming agreements with Middle East countries including Qatar, Saudi Arabia, Brunei, Oman and Kuwait to produce rice and corn covering a total land area of 340,000 ha between 2008 and 2009.²² Most of these lands are located in the conflict areas of Mindanao since the farmers are also Muslims and their agricultural practices conform to the standards of these countries.

Aside from Mindanao, the northern part of the Philippines has been also targeted for large-scale plantation due to its geographic location and vast area of agricultural lands. The biggest agro-fuel plantation being developed by a Japanese-Filipino consortium is located in Isabela, Cagayan spanning 11,000 ha to be planted with sugarcane. The consortium started their operation in 2009 with an initial area of 3,000 ha.²³

Basic information about investment trends and/or key financiers

Agribusiness is not new in the Philippines. The country has exported high value crops such as banana, pineapple and coconut products to the US, Japan and the Middle East since the American period. As early as the 1920s, Del Monte Corporation established a pineapple plantation in Bukidnon and in the 1960s, Castle and Cooke entered South Cotabato to set up what is known today as the Dole plantation.

These corporations remained in the Philippines and were later joined by other agricultural companies such as Chiquita and Sumitomo to plant pineapple and bananas in Mindanao. Together, these companies accounted for around USD \$291 million of annual exports from the country in 2000.²⁴ In addition, Nestle has been operating in the Philippines for decades, investing in coffee plantations in

the hilly regions of the country.

When the food crisis began in the last decade, the Philippines joined the fray in cornering big agribusiness investments from China, South Korea and oil-wealthy Middle Eastern countries in a bid to secure their food and fuel supplies.²⁵ The Philippine government has aggressively promoted the country as the top agricultural hub in Asia during presidential visits and the administration often boasts about its achievements in this regard, even where agreements are still being negotiated.²⁶

Such proclamations are not passing unnoticed. According to Chris de Lavigne, the Global Vice President of US-based company Frost & Sullivan, biofuels in the Philippines are also attracting a large number of foreign and local investors due to its “attractive investment sites for bio-fuel projects”.²⁷

Laws that support the entry of foreign investment in the country have long been passed by the government which makes it easy to establish a consortium with Filipino-based companies. Among the areas open for agribusiness are those lands under the Comprehensive Agrarian Reform Programme (CARP) and untenured forest lands under the management of the DENR. The National Development Corporation, the corporate arm of the DENR, facilitates the investment of foreign enterprises in plantations, whereby land is acquired and leased to the investors for a period of 25 years. To circumvent policies on leasing prohibitions, foreign owned firms usually enter into growers’ agreements with the landowners.²⁸

Two of the local giants engaged in agribusiness are the San Miguel Corporation (SMC) and Agri-Nurture. Another firm, the First Pacific Co. Ltd, owned by businessman Manny Pangilinan,

is also eyeing agribusiness as its next target and the company is looking for 240,000 ha of land to be planted with high value crops in partnership with Jakarta-based subsidiary PT Indofood.²⁹ These developments signal a shift in priorities of local corporations as more of these are diversifying into agribusiness ventures.

As the need for land intensifies, foreign governments are solidifying their hold in the Philippines in the guise of technical assistance. The Korean International Cooperation Agency (KOICA), for instance, has established a USD\$ 4 million job training centre to teach farmers how to plant and harvest larger volumes of crops, but in return the Philippine government has to identify and make available some 100,000 ha of prime agricultural land where investors from South Korea will be invited to operate. This is included in the Memorandum of Understanding (MoU) for the Multiple Industry Cluster (MIC) project that includes agribusiness, signed by the Philippine and Korean Governments.³⁰

China has adopted a similar strategy, leasing lands in the Philippines through free trade and investments agreements, promising projects worth millions of dollars. However, the most recent agreement with China in 2007 did not materialise as a result of public unrest since the negotiations were shrouded in secrecy.³¹ Japan also has several projects in Mindanao that promotes agribusiness as a strategy to achieve economic growth and poverty alleviation.

In 2009, the World Bank also increased its available loans, grants, equity investments and guarantees by 54% from the previous year, all of which are directed at facilitating land deals in developing countries, including the Philippines.³²

When the government began to push for the extension of the Agrarian Reform Law

in 2009, foreign governments expressed apprehension. Saudi executives representing big agricultural interests and the European Union (EU) reportedly pressured the Philippine government to remove its ban on foreign ownership of land through the provisions of the World Trade Organization (WTO).³³

Problems with Land Acquisition

Lack of clear land use policy and land data

The Philippine Constitution of 1987 guarantees the right of every Filipino to own land. Not all Filipinos, however, have the capacity to own land given their social and income statuses. This is especially true for farmers living in the rural areas. The existing skewed land ownership in favour of the local elites has resulted in several decades of unrest that have been partly solved by implementing the Comprehensive Agrarian Reform Law (RA 6657), where lands have been distributed to poor peasants. Moreover, the government has recognised the rights of indigenous peoples over their ancestral domain through the passage of the Indigenous Peoples Rights Act (IPRA) in 1997.

However, as the current trend in agribusiness expansion continues, these minor successes in terms of land rights recognition are increasingly being threatened. While the government is aggressively promoting land investments in CARP and indigenous peoples' areas, farmers are kept in the dark about land deals. Worse, the government refuses to provide timely, adequate, legitimate, accessible and useful information to these communities and other stakeholders. Even the PADCC admits that there is a clear lack of systematic monitoring of land leases and concessions in every region.³⁴

The absence of a clear land use policy is

also causing alarm as lands are being converted to other uses as this could threaten the integrity of the ecosystem and further undermine the gains of the agrarian reform.³⁵ Government maps and land records are often not accurate and subject to differing interpretation. These loopholes are being used by the local elites and joint ventures to enter areas and secure land deals, often at the detriment of smallholder farmers' livelihoods and rights.

Furthermore, among the areas being promoted for agribusiness are untenured lands and forest lands, but untenured does not necessarily mean unoccupied lands. Most often than not, there are families who subsist on these lands for their daily survival. These are the same people who have very meagre resources to develop the land, much less to own it.

Land grabbing and land conflicts

Land grabbing is also not a new phenomenon in the Philippines. It has been the starting point of many struggles in the country that have led to armed insurgency in the past.³⁶ While in the past, farmers were up against the landed elite, today, they are confronting the rising demand for land from agricultural companies. This has taken the form of lease agreements between corporate entities and small and medium-sized land owners. In many cases, the asymmetrical distribution of power has resulted in the farmers losing out in terms of interest to these companies, with negative impacts on their livelihoods. There is also a growing fear that the lease of land to corporations will allow large landowners to evade the implementation of the agrarian reform programme, which must be completed by December 31, 2020.³⁷

In 2010, the Asian Human Rights Commission, Task Force Detainees of the Philippines, Task Force Mapalad, Partnership for Agrarian Reform and Rural

Development Services (PARRDS), and Food First Information and Action Network (FIAN International) documented around 2,377 cases of human rights violations in agrarian disputes.³⁸ Unfortunately, there are no clear statistics on the number of cases attributed to land grabbing and there is an absence of consolidated data even at the level of the Commission on Human Rights (CHR).

Cases of farmers being forced out of their lands or being coerced to agree to leasing their lands for conversion to large-scale plantations are being reported by the media and local NGOs. The most prominent case is that documented by the International Fact Finding Mission (IFFM) on the San Mariano bio-fuel project in Isabela, Cagayan. Reportedly the largest biofuels plantation in the country with a planned area of 11,000 ha, the Japanese-Filipino consortium of Green Future Innovations Inc., is already exacerbating land grabbing conflicts and socio-economic inequities as well as undermining food self-sufficiency in the area.³⁹ Aside from numerous human rights violations, the company is engaged in non-transparent lease negotiations that are resulting in lands being grabbed from the very farmers who depend on the land for survival.

Another case that has been gaining importance is that of A. Brown Company, Inc., which is involved in massive appropriation and conversion of farmlands to oil palm plantations in Mindanao. The Apu Palamguwan Cultural Education Center (APC), Kalumbay, Sentro Kitanglad, Rural Missionaries of the Philippines (RMP) and the Pesticide Network Asia Pacific (PAN AP) conducted an International Fact Finding Mission and documented severe cases of human rights violations such as strafing, illegal arrests and holding farmers at gunpoint while company personnel destroyed their crops. Farmers are also subjected to pesticide poisoning and

indigenous peoples in the area to forced displacement. The conflict also led to the killing of a local activist opposed to the oil palm plantation in 2012.⁴⁰

Rights of smallholders

The fact that the majority of lands in the Philippines are already occupied by farmers and indigenous peoples, regardless of whether they have legal tenure or not, means that the government is expropriating lands for agribusiness at the expense of these communities, including of smallholders. The legality of owning the land is being used by the government and agribusiness companies as a means to justify their purchase of these lands, which could further aggravate landlessness and cause several forms of insecurity (including food and land) for smallholders and other local communities.

Even where land is already under the Agrarian Reform Programme, the government, with the collusion of local elites and local government officials, can still find ways to circumvent policies in favour of agribusiness development. For instance, in Isabela, the peasants, whose lands are being targeted by Green Future Innovations Inc., were required by the local government to pay an annual amortisation fee of Php 35,000 (or USD \$875) per ha⁴¹ to the Land Bank, along with accumulated interest, in order to keep their land, an amount which is completely disproportionate to their small income. Failure to pay is to be followed by notices of foreclosure that can result in the land being re-allocated under a voluntary offer to sell (VOS), whereby it can be easily purchased by the company or individuals.⁴² There were also cases where lands are being spuriously claimed by individuals who are not from the area, thereby displacing the voices of those smallholders who are the original occupants of the farm.

In terms of policy, it is a requirement that consultations be done to obtain the approval of the community for any farm development project. In areas covered by Certificate of Ancestral Domain Titles (CADTs) the company should secure first the free prior informed consent (FPIC) of the indigenous peoples in the area.

However, this is hardly implemented in practice. Investors usually go the easy way by conniving with local officials (who are usually the local elites in the area) or bribing tribal leaders with “comfortable deals”.⁴³ With the support of the military, such companies can harass smallholders into giving up their lands for sale or for long-term lease at a derisively low price or rent over a period of 25 years.⁴⁴ Those who agree to the terms of the company are practically reduced to the status of farm workers, with very limited benefits and are often underpaid.

In some cases, even if the smallholders have already entered into an agreement with the company, the latter can still “turn their backs” on the farmers. This is what happened to the smallholders of Lumbia Farmers Multi-Purpose Cooperative (LUFARMCO) which undertook a joint venture with PNOC-AFC to plant jatropha on their lands in Cagayan de Oro city. In 2009, the company decided to stop their operations and the farmers are now left with jatropha already bearing fruit but without buyers.⁴⁵ The unequal rights between the agribusiness ventures and the smallholders are causing havoc to the livelihoods of these farmers, eventually affecting their ability to earn income and provide food for their own families.

De la Cruz 2011 aptly summarise the situation of smallholders in the Philippines:

“The common fears being expressed are two-fold: first, it is feared that farmers who have been occupying the

land under various ownership or tenure arrangements – whether formal or informal – and who have been tilling it for centuries, may become either disposed completely or in the case of those who are title holders, become relegated to the status of farm workers and tenants again.”

Environmental impacts of expansion

Environmental integrity is being threatened by agribusiness in the Philippines since it requires vast areas of land to be planted with a single crop. The sector promotes the clearing of forestlands and the conversion of these areas into mono-crop plantations, practically reversing years of reforestation efforts. While the government is targeting “idle lands” for agribusiness, this does mean that these lands are without tree cover or do not support biodiversity.

In Mindanao, several hundred thousands of hectares have been converted into oil palm plantations. Aside from leading to the conversion of agricultural or forestland areas formerly allocated for food production, this agro-fuel crop is very much dependent on chemical inputs, which have negative environmental impacts, such as the contamination of groundwater supplies and the loss of biodiversity due to forest clearings.⁴⁶ Jatropha, on the other hand, requires five times as much water per unit of energy as sugarcane and corn and about ten times as much as sugar beet. Hence, the growth and yield of jatropha planted in marginal soils are expected to be low aside due to the fact that it will compete directly with the water demands of the local population.⁴⁷

The absence of a comprehensive land use law in the country is also being used by large agribusiness companies to encroach into forest and protected areas, which is depicted by the case of Mt. Kitanglad in Bukidnon where the forest in the lower slopes has already given way to vegetable

production. In the Isabela case, areas of expansion for sugarcane evidently overlap with the land already assigned to Socialised Industrial Forestry Management Agreement (SIFMA).⁴⁸

The environmental impacts of large scale mono-crop plantations being operated by multinational corporations recently hugged the limelight when tropical storms Washi and Bopha hit the areas of Bukidnon, Compostela and Davao provinces, where millions of crops and properties were destroyed and hundreds of lives lost. Environmentalist and leftist groups are blaming the destruction of ecosystems on mono-crop plantations, which are believed to have weakened the environment's ability to repulse the threats of floods and strong winds. This was used by the New People's Army (NPA) as the main reason to attack and destroy the facilities owned by the Del Monte Corporation (NDF Press Statement 2013).

Although the Philippines does not lack laws on the environment, many of these are ineffectively enforced on the ground due to corruption and malpractice. Several ground-breaking laws on clean air and water as well as protected area management and Environmental Impact Assessment (EIA) have already been enacted by the Congress and signed by the President, but lack of financial and human resources as well as lack of political will are hampering their implementation.

Land rights

A large portion of alienable and disposable lands in the Philippines is already occupied, while some is owned and some is in the process of distribution under CARP. Even those lands characterised as idle lands targeted for agribusiness are not without occupants. Under such conditions, there is an increased possibility of human rights abuses, however nominal, during land negotiations. Cases of land

dispossession have already been recorded by NGOs, and land grabbing has become an urgent issue in the country.⁴⁹ Instead of being land owners, local communities are reverting back to being tenants or worse, becoming daily wage farm workers with severely limited negotiating powers.

Furthermore, land lease costs are usually not commensurate to the yield that could be earned by farmers if they were the ones tilling the land. In Mindanao, for instance, Ecofuel, a biofuel company, is leasing one ha of land for just PhP 6,000–PhP 8,000 per year (USD \$150 – 200) when in fact the same size of land could earn farmers at least PhP 42,000 per year (USD \$1,050) if they were to plant rice or corn for a minimum of PhP 5,000 – 9,300 (USD \$125 – 233) per year, or with bananas, with which they could earn a minimum income of PhP 34,000 (USD \$850) per year.⁵⁰

In terms of land development, smallholders have very limited voice in negotiations and decision-making, especially if the national or local governments have already identified their areas for agribusiness development. While local governments are part of the land negotiation process, they usually side with the investors due to the local taxes that they can get out of the land deal, at the expense of poor farmers.

Not all land deals in the Philippines, however, are inherently inimical to farmers' rights. The examples of agribusiness firms Unifrutti and La Frueta in several municipalities of Sultan Kudarat, Maguindanao and Lanao del Sur have brought community development and peace to these former hotbeds of Muslim insurgents from the Moro Islamic Liberation Front (MILF).⁵¹ In 2005, Unifrutti decided to invest in Wao, Lanao del Sur in rubber and pineapple plantations, despite its reputation as a MILF area. The gamble appears to have paid off and has resulted in the

employment of 1,500 farmers by the company, the majority of whom are former rebels, making dividends of peace in return. The farmers are now busy working in the plantation earning income for their families.⁵²

Right to food

It is ironic that while the government is inviting agribusiness companies to invest in the Philippines, the country has continued to rely on imported rice in the past few years. During the food crisis of 2008, rice imports of the country ballooned to 2.1 million metric tonnes.⁵³ The majority of farmers are also characterised as poor and their only source of income is from farm produce. If the main reason for these investments is to secure food supply, then the question remains, *whose* food security is being prioritised?⁵⁴

Unless the government institutes reform or grants safety nets to small farmers, the sources of livelihood and food supply of the communities will be lost to agribusiness. This may lead to condition similar to that seen in the past where insurgents populate and rule rural areas due to power inequalities experienced by farmers in the face of powerful landlords.

Right to remedy

There are several statutes in the Philippines that guarantee the right to remedy of farmers. This is enshrined in the constitution, the IPRA Law and CARP Law. Freedom of expression, which is very much alive in the country, can also act as an effective form of redress to balance the power playing field in land deals. For instance, the anomalous agreement with China in 2007 involving 1.2 million ha of land fell apart when civil society protested against its lack of transparency and its detrimental effects on the country in general and to the farmers in particular.⁵⁵

NGOs involved in land advocacy are also numerous in the country, sometimes offering legal assistance to farmers and smallholders. The Commission on Human Rights (CHR) is likewise active in promoting a rights-based approach to agricultural expansion, and farmers can file a case with the CHR against unscrupulous companies.⁵⁶

Judiciary

While the judiciary itself does not lack laws upon which judges can base their decisions in relation to land disputes, the problem lies with capacity of farmers to make use of formal judicial proceedings to achieve redress. In most cases, farmers have very limited resources to engage in the long and arduous legal process required, and find themselves pitted against opponents with far more resources at their disposal.

Coupled with intimidation from security forces hired by the company or military assigned to secure the company's interests, the farmers, in most instances, are forced to give up the fight. Judges are also subject to corruption whereby decisions tend to be in favour of the agribusiness companies, rather than the affected communities.

Consultation

Social acceptance is usually embedded in the negotiation process when large-scale agricultural projects are introduced to communities. This is being done through community consultation or by securing the FPIC of indigenous peoples if the area to be developed is an ancestral domain. While companies usually heed this process, they tend to do it haphazardly without divulging important facts (such as potential negative impacts) to the community. Companies also sometimes dangle comfortable deals in the face of tribal leaders or government officials to make the negotiation faster and easier.⁵⁷

Internal displacement/involuntary disappearance

Land disputes involving large agricultural companies often result in the internal displacement or land dispossession of farmers, leaving them with no recourse but to work as farm labourers. With wages based on *pakyaw* or payment of a group of labourers based on a completed work, the daily wage is far below the minimum standards, and fall as low as PhP 50 (USD \$1.25) per day.⁵⁸

There are also reported cases of involuntary disappearance of farmers or activists opposed to big agribusiness companies. According to the monitoring of Kalikasan-PNE, 37 environmental activists were killed between November 2001 and June 2010 and another 11 between November 2010 and October 2011, most of whom were involved in campaigns against large-scale mining projects and agribusiness. Among the suspected perpetrators are the police, military and private security of corporations.⁵⁹ Some of the victims include indigenous leaders who resist development projects that can potentially destroy their environment. Even women leaders have not been spared in these killings.⁶⁰

Child and forced labour

While the Philippines has ratified the International Labour Organisation (ILO) standards on the use of child labour, a recent study conducted by The Center for Trade Union and Human Rights in 2012 revealed that around 24% of workers in palm plantations in Mindanao are children.⁶¹ Child workers work as much as 12 hours a day in oil palm plantations and have to do physically demanding jobs such as hauling 15 to 50 kilos of palm fruit bunches. The study also found out that palm oil companies do not give minimum wage. This is also the case for sugarcane workers in Negros and elsewhere in the country such as in the cases documented

by IFFM in 2011.⁶²

The practice of using child labour in plantation has been well documented in the Philippines, yet persists to this very day. Civil society actors blame poverty as the root cause of this inhumane treatment of children, whereby they are forced to work to support their families. The situation is likely to aggravate in the future in light of numerous agreements that are being negotiated by the government for agribusiness, if no measures are taken immediately to address this serious human rights violation.

The Philippines' international human rights obligations

The Philippines is a signatory to around 23 international instruments under the UN system. Among those relevant to agribusiness and land grabbing are the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of Racial Discrimination (CERD).⁶³ The Philippines is therefore bound under international law to protect every citizen and ensure the human right to land and food.

Currently, the CHR is advocating for a rights-based approach to agribusiness expansion that should lead to the development not only of the State but more importantly of every individual, including the farmer. The CHR notes that the State “cannot blindly pursue an export-oriented economic policy without regard to basic and material rights of its citizens.”⁶⁴ A right-based approach to agribusiness expansion should conform to the individuals' right to food, right to water and right to development. It must result in the eradication of hunger and must not be to the detriment of the environment. Expansion must not trample upon the

rights of farmers and indigenous peoples to their land. It should lead to the development of not only the State per se but of every individual.⁶⁵

While the Philippines has made some progress in ensuring that the human rights of vulnerable groups are being respected, these initiatives should be reinforced by further action on the ground. Brad Adams, Asia Director of Human Rights Watch summarises the situation as follows,

“The overall human rights situation in the Philippines improved in 2012 with fewer extrajudicial killings and the passage of historic laws promoting rights. But the government has failed to address impunity for the most serious abuses. On prosecuting rights abusers, it needs to walk the walk, not just talk the talk.”

Human rights framework as it applies to agribusiness

In general, the government of the Philippines professes that all land investments are guided by laws and respect the rights of the agrarian reform beneficiaries, indigenous peoples and smallholders as well as protect the integrity of the environment against the detrimental effects of these investments. It also asserts that the entry of foreign companies in agribusiness would generate more jobs to carry the rural population out of poverty.

However, no specific policies have been developed to require that agribusiness companies comply with human rights provisions of international treaties and agreements to which the Philippines is a signatory. Compliance still rests with these companies under the principle of voluntary self-regulation.

The majority of documented cases of human rights abuses are coming from the mining and political sectors, but local

NGOs and rights groups have also started to record cases of abuse in the agribusiness sector in the past five years. These abuses range from lack of consultation, internal displacement, forced disappearances, arbitrary arrests, killings of activists and harassment by pro-company military forces.

The documentation of such abuses is often done by a local organisation in partnership with a foreign organisation with a focus on farmers and human rights. These organisations often conduct international fact-finding missions that expose these abuses and engage in dialogues with government officials to provide immediate relief to affected individuals and communities.

Recent legal developments which strengthen or weaken rights

A law that can criminalise enforced disappearances, and which is said to be one of its kind in Asia, has recently been passed in the Philippines.⁶⁶ The Anti-Enforced or Involuntary Disappearance Act of 2012 will be one tool in helping in the struggle for a genuine agrarian reform and in empowering farmers to fight against large-scale land grabbing in the country, especially those by agribusinesses that use the security forces of the government to advance their interests.

According to the new law, enforced disappearances are defined as the detention of a person by state officials or their agents followed by a refusal to acknowledge the detention or to reveal the person’s fate or whereabouts. Although not yet well documented, it is widely acknowledged that enforced disappearances are taking place in the agribusiness sector and related human rights advocacy.

Another important legal development in the country is the Supreme Courts’ approval of the Rules of Procedure for

Environmental Cases through the Writ of Kalikasan (Nature) in 2010. This is a remedy available to Filipinos or public interest groups on behalf of marginalised people whose constitutional right to a balanced and healthy ecology is violated or being threatened by development.⁶⁷ The Writ has the potential to be used as a legal avenue against oppressive agribusiness expansion in rural areas, especially if the business is posing a threat to the environment.

While the Philippines has passed several landmark laws on human rights, the challenge remains as how to enforce these laws against big companies which are viewed as allies of the State in pursuing economic development, but which in reality may be operating for profit alone and with clear disregard for the welfare of ordinary farmers and local communities.

Recommendations

As the Philippines continues to promote and strengthen its agribusiness sector, the government has to step up its efforts in respecting the rights of ordinary citizens and farmers against land grabbing, unfair labour practices, use of child labour and forced deals without respect for Free, Prior and Informed Consent.

This issue has to be solved by using a multi-pronged approach in which the participation of different sectors of society is a critical component. Agribusiness expansion is an inevitable reality that needs to be addressed by the government, the private sector and civil society by devising ways to counter its negative repercussions on property regimes and fundamental human rights.

The first order of battle is still to complete the distribution of lands under the CARP. By having their individual land titles, farmers will hold the instrument in which to anchor their land struggles and allow these struggles to withstand scrutiny in

court. Without this legal document, farmers can immediately succumb to pressures posed by agribusiness due to the massive resources and political clout of this sector and its actors and allies.

A law on comprehensive land use at the national level is another urgent task. At present, the permanent forest line has yet to be established and land uses can easily be altered at the local level without due consideration for the environment and existing local food production systems. Setting aside permanent areas for agricultural production would prevent the encroachment of agribusiness into critically sensitive and culturally significant areas. Each land use should also conform to the biophysical and socio-economic conditions of the area in order to maintain its integrity as a distinct ecosystem.

It is also imperative that agribusiness companies be required by the government to respect and implement the international treaties on human rights to which the Philippines is a signatory, as their code of conduct. With this mechanism in place, there will a better chance of agreed collective consent in the monitoring of human right standards in areas where agribusinesses are operating.

Multi-sectoral monitoring should also be done starting from the identification of areas for the agribusiness expansion, community consultation and negotiation, right up to the implementation of the agreement to ensure that human rights are properly acknowledged and respected in the process. This will in turn pave the way for responsible agribusiness on the ground in partnership with the government and civil society that could foster inclusive and sustainable growth in the long run.

A prerequisite to this is to have a clearing house for foreign investments on agribusiness. This would establish

mechanisms and regulations for all investments involving the lease of agricultural lands as well as maintain a database system where information would be kept. Documented investments would be subject to a permit system whereby companies need to register and will be mapped for easy monitoring. Failure to strictly enforce human rights standards could act as a ground for the cancellation of permits.

It is also of critical importance to explore other avenues to making agribusiness acceptable to indigenous peoples. For instance, in cases of conflicts, the State should honour traditional conflict resolution mechanisms that are known to indigenous peoples and have in the past proven effective on the ground. In this way, indigenous peoples will be better included in decision-making processes relating to issues that profoundly affect their daily lives, and will ensure that their rights are respected by agribusiness companies as part of their corporate social responsibility.

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