A DESTINY OF DEBTS
Unmasking the Prejudicial Contracts in the Philippine Banana Industry

After 28 years of implementation, farmer beneficiaries of the Comprehensive Agrarian Reform Program continue to struggle from inadequate support services, while those who received land suffer from unfair agri-business contracts. Over the years, various forms of agribusiness venture agreements or AVAs, relegated farmers to becoming laborers in their own land, and have pushed them back into a vicious cycle of debt and poverty, undermining the program’s vision of emancipating and empowering the Filipino peasantry.
The Philippines is the world’s second largest exporter of bananas, after Ecuador, with some 2.6 m tons exported in 2012. That year, the exports from the Philippines (essentially the Cavendish variety) made up 98 percent of the Asian banana trade. Two thirds of the exported volumes were shipped to Japan, China and South Korea.¹

In terms of production volume, banana is the third largest commodity in the country, next only to rice and coconut.²

Unfortunately, those who feed this lucrative trade – the banana farmers – have not felt the benefits of the success of this industry. These farmers, most of whom were former workers in banana plantations emancipated through the government’s agrarian reform program, have been embroiled in onerous contracts with banana exporters such that they get to see very little of their hard work translated into actual economic improvement. Some have been mired in debt for years. In worse cases, some have been driven back to being farm workers – on their own land.

The situation is mostly due to prices that are controlled by banana trading companies and contracts whose provisions are grossly skewed in their favor. These are reflected in grossly disadvantageous provisions written into various types of agribusiness venture agreements (AVAs). Such provisions have in effect relegated the farmers back to being workers on their own land, driving them back into a vicious cycle of debt and poverty, contrary to the vision of the country’s agrarian reform program. Such a condition is also exacerbated by natural calamities, such as typhoon Bopha in 2012, as well as peace and order issues in the southern island of Mindanao.

The biggest issue confronting the farmers is the contracts with their buyers.

Since 2013, IDEALS, with support from Oxfam, reviewed a number of AVA contracts entered into by farmer-cooperatives with buyer-companies. Most of these contracts highly favor the companies and, on the part of the growers, is the primary cause of their financial losses.

Following are some of the findings of the study, highlighting the most challenging issues faced by agrarian reform beneficiaries and their cooperatives:

1. Financial control devices written into the contract guaranteed the banana farmers’ full dependence on their buyer, with their buyer having near-absolute full control over the cooperative’s financial health. These include price control mechanisms where the buyer is free to impose a set price on the bananas, regardless of production costs and actual market rates; provisions allowing for unbridled increases in production costs without the farmers’ approval; and contractual restrictions on property rights preventing farmers from planting other crops for added income.

2. The contracts also reveal a clear bias in favor of the buyers. Strict language is used to describe the farmers’ obligations, while those that involve the buyers are loosely worded to leave room for maneuvering. Some provisions are also vague, leaving too much room for interpretation.

3. The contracts also offer no effective remedy against abuses. In one contract, the buyer has sufficient power to drive the farmer-cooperative into bankruptcy.

4. Government failed to effectively regulate AVA’s, and to empower farmers to negotiate from a position of strength. The Department of Agrarian Reform failed to protect the interests of agrarian reform beneficiaries (ARBs) who enter into such agreements, by failing to provide legal and technical support to ARBs, most of whom lack the capacity to negotiate from a position of strength, to ensure fairer contractual terms. While the DAR had issued several guidelines ostensibly to regulate AVAs, the prevalence of grossly one-sided contracts indicates strongly its failure to enforce its rules and regulations.
The cases of Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO) and the five different farmer organizations with contracts with Sumifru Philippines have even been brought to the attention of the House of Representatives, which conducted a congressional inquiry resulting in a Bill⁴ being filed to regulate AVAs in agrarian reform lands.

Below are the key recommendations from the study:

**For the National Government:**

1. Government, thru the DAR and the Presidential Agrarian Reform Council, must conduct a thorough review and audit of all agribusiness venture agreements (AVAs) entered into by agrarian reform beneficiaries (ARBs).

2. The Department of Agrarian Reform, Department of Agriculture, Department of Trade and Industry, Department of Environment and Natural Resources, and Department of Labor and Employment must issue a joint regulatory framework to comprehensively address the issues besetting the banana agribusiness industry.

3. The regulatory framework must promote and ensure gender equality and women empowerment.

4. Encourage agribusiness companies to adopt inclusive, responsible and sustainable business through the grant of incentives and awarding of citations to compliant businesses.

5. Farmers must receive regular technical capacity building and support to improve farm productivity.

**For Private Sector Exporter Companies:**

1. Banana exporters should realize that their lifeblood lies in their farmer-cooperative partners. Thus, they should treat them equally and fairly. They already earn a substantial amount from their exports and should give their partner-farmers their due – a just and equitable price for the bananas produced.

2. Banana agribusiness companies to incorporate a corporate social responsibility framework that promotes fairness, transparency and equality to its contractual partners, the communities where they conduct business, to its suppliers and to other partners in the value chain.

3. Banana agribusiness companies to adopt inclusive, responsible and sustainable business.

**For Banana Farmer-Producer Cooperatives:**

1. Banana growing cooperatives should realize that they are the lifeblood of the industry. They should not surrender the control and management of their farms to corporate investors. They should demand from their contractual investors a high degree of transparency, accountability and fairness in the implementation of their contracts.

2. Banana farmers should organize themselves into associations for mutual protection and proactively support and participate in its activities.

3. There should be vigilance always to protect their interests. Banana farmers should scrutinize each and every move their partner exporters make. The farmers should make sure that mechanisms are in place for vetting and approval of suppliers, since they are the ones paying for it. If possible, they should be the ones to look for suppliers.

4. Farmers should equip themselves with the necessary skills to run their farms as a business. They should think and act as businessmen. Trainings are available from the CDA, DTI and cooperative networks. They should actively seek these trainings.

5. As women are an integral part of the organization or cooperative, they should be part of the cooperative’s governance and decision-making.
Bert has been a banana farmer all his life, toiling on a small patch of land in Osmeña, Compostela Valley. Together with his fellow farmers, he joined the DFC ARBA farmer cooperative. The quaint smile on his face conceals the long-drawn struggle that he and other members of the cooperative has been up against for so many years: big and powerful companies, and extreme weather events that are increasingly becoming more frequent and severe.

In 2012 Typhoon Bopha devastated the villages and livelihoods of people living in the southernmost island of the Philippines, Mindanao. Four years later, memories of this tragic event remain etched in the memories of the farmers who have barely recovered their livelihoods years after the disaster struck. Upon entering their Cooperative office, photos stuck on the half-rebuilt walls show acres and acres of banana trees that looked like they had been cut in half – not by the people who depend on them for a living, but by ferocious winds that tore up houses and wiped out everything along its path.

Bert speaks openly about the situation of the banana growers, who to this day are still paying borrowed money they used to recover their livelihood. “We took out a loan to be able to replant all our banana trees, which we have started repaying this year (2016)”, he shares.

But even without this loan, the balance sheet does not look good. The low buying prices for bananas and the unfavorable contracts signed with their buyer-company, without the community really understanding the contract’s terms and conditions, meant they are perpetually in a cycle of debt and income that is compromised.

Being locked into a contract that fixes a very low buying price for the company isn’t the only problem. The contract is often signed by farmers who are neither knowledgeable in legal language nor clearly understand its complicated and lengthy clauses. It stipulates that farmers have to buy all their inputs (like pesticides) from the company; they have no control over the price of their produce; no say regarding the type and cost of inputs; are virtually clueless on quality standards; have no power to challenge the classification of their produce from Class A to Class B, and that they are banned from growing anything else on their own land to supplement their income. This one-sided contract leads to virtual slavery for agrarian reform beneficiaries and their cooperatives.

The economic hardships the contracts wrought on families and their communities are shouldered disproportionately by women. They render long unpaid work on the farms to help in cutting down production costs, in addition to child rearing and household duties they have to perform.

On the whole, women do not work on the farms “because it’s a man’s job”. Instead, they take on the support roles within the cooperative, without compensation, no social protection, insurance for housing or medical needs, and also very little representation on the cooperative board.

Arrangements gone wrong: Farmer beneficiaries and unfair contracts

In 2013, the Initiatives for Dialogue and Empowerment Through Alternative Legal Services (IDEALS) Inc., in partnership with Oxfam, conducted a study that explored and brought to light the vulnerabilities of Agrarian Reform Beneficiaries (ARBs) and other small-scale farmers in their contractual relations with large traders and multinational companies (MNCs). Its objective is to identify interventions and support for ARBs in their contractual engagements with large traders and MNCs. Priority was given to the study of existing and proposed AVAs of ARB Organizations in the Davao region who were affected by Typhoon Bopha.
A detailed inspection of the contractual relationship was conducted on the following groups of ARBs:

- Hijos Agrarian Reform Beneficiaries Cooperative (HARBCO) and its corporate partner-contractor, Lapanday Foods Corporation (LFC)
- Five (5) Davao Fruits Corporation Agrarian Reform Beneficiaries Association (DFC-ARBA) and a foreign-owned domestic corporation, Sumifru Philippines.
- Dizon Farmworkers Cooperative and Marsman Drysdale Organic Farms
- Checkered Farms Agrarian Reform Beneficiaries Multi-Purpose Cooperative (CFARBEMCO) with Standard Fruit (Phil) Corporation (STANFILCO)
- AMS Magatos Agrarian Reform Beneficiaries Multi-purpose Cooperative (AMS MARBEMCO) with UNIFRUTTI

Except for the cooperative with contract with Unifrutti, the rest of the cooperatives are highly dissatisfied of their contracts with their investors. Companies obtain fabulous profits by ensuring that farmers pay, on most occasions with interest, all the advances made for farm production and other related expenses of the farm, and purchasing their produce at low prices. These practices are plain rent seeking on the part of the investors.

As a result of the case studies, a Congressional Inquiry on the onerous contracts between HARBCO and Lapanday Foods Corporation was conducted during the 16th Congress of the Republic of the Philippines, which resulted to the filing of House Bill No. 5161 (An Act Regulating the Establishment and Implementation of Agribusiness Ventures Arrangements (AVAs) in Agrarian Reform Lands). However, the Bill has not been passed into law. Policy recommendations were also submitted to the Department of Agrarian Reform, with the end-view of revising its AO 9-06.

Towards the end of the Aquino administration, the DAR issued Administrative Order 4 series of 2016, entitled “Rules on Agribusiness Venture Agreements”, that aims to address the issues that cropped up in relation to AVAs since the issuance of AO 9 series of 2006. Among the salient features of AO 4-16 are: (1) the recognition that the State shall promote social justice in all phases of national development; (2) that existing rights to land are recognized and respected; (3) that investments do not jeopardize food security but rather strengthen it; (4) that investments generate desirable social and distributional impacts and do not increase vulnerability; (5) that legitimate tenure rights are recognized, respected, and safeguarded; and (6) that business enterprises act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others.

However, DAR Secretary Ka Paeng Mariano has issued a directive suspending its implementation until further notice and subject the same to further review and consultation.

On the part of HARBCO, it continuously engaged the Land Bank of the Philippines for the bail out of their debt to Lapanday Foods Corporation, which has breached the PHP600 million mark. The cooperative also filed a case of nullification of its contractual arrangement with LFC before the Presidential Agrarian Reform Council (PARC). However, the case was unacted because the PARC was not convened during the administration of President Benigno Aquino III. When the Duterte administration convened the PARC, the case was already referred to the Provincial Agrarian Reform Adjudicator (PARAD) for resolution.

The referral was the offshoot of a Department of Justice (DOJ) opinion that stated the DARAB, not PARC, which has jurisdiction over the issue. The PARAD ruled in favor of the farmers but the same was still under appeal.

In the midst of all this, the agrarian reform beneficiaries continued toiling their awarded lands hoping that justice would be served in their favor.
The Philippines is the world’s second largest exporter of bananas, after Ecuador, with some 2.6 m tons exported in 2012. That year, the exports from the Philippines (essentially the Cavendish variety) made up 98 percent of the Asian banana trade. Two thirds of the exported volumes were shipped to Japan, China and South Korea.\(^7\)

In terms of production volume, banana is the third largest commodity in the country, next only to rice and coconut.\(^8\)

As of 2012, the Philippines’ banana exports exceeded US360 million and accounted for about nine percent of the country’s total agricultural export value. In that year alone, more than 80 percent of the bananas (and 99 percent of the Cavendish cultivars) were produced on the southern island of Mindanao, with Davao, Northern Mindanao and Soccskargen as the top producing regions.

In 2014, the country produced 8.9 m tons of bananas on 442,751 ha, with Cavendish cultivars accounting for about 50 percent of national banana production.\(^9\)

While the Philippines has long exported bananas to Japan and other Asian countries, the country began exporting the crop to the United States and the European Union in 2013.

### PHILIPPINE BANANAS GO WHERE?

<table>
<thead>
<tr>
<th>Country of Destination</th>
<th>Volume (100 mt)</th>
<th>Value (FOB in million US $)</th>
<th>% Share (Value)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Japan (excludes Okinawa)</td>
<td>792.14</td>
<td>167.68</td>
<td>52.51</td>
</tr>
<tr>
<td>Iran, Islamic Republic of</td>
<td>219.57</td>
<td>38.74</td>
<td>12.13</td>
</tr>
<tr>
<td>China, People’s Republic of</td>
<td>165.80</td>
<td>33.10</td>
<td>10.37</td>
</tr>
<tr>
<td>Korea, Republic of South</td>
<td>113.28</td>
<td>24.75</td>
<td>7.75</td>
</tr>
<tr>
<td>Singapore</td>
<td>96.17</td>
<td>19.21</td>
<td>6.02</td>
</tr>
<tr>
<td>Others</td>
<td>203.11</td>
<td>35.82</td>
<td>11.22</td>
</tr>
</tbody>
</table>

Source: Bureau of Agricultural Statistics (BAS), Department of Agriculture (DA)

Those who feed it – the banana farmers, have not felt the success of the Philippine banana industry. Mostly former workers in banana plantations emancipated through the government’s agrarian reform program, these farmers are embroiled in onerous contracts with banana exporters such that they get to see very little of their hard work translated into actual economic improvement. Some have been mired in debt for years. In worse cases, they lost effective control of their lands and are relegated to being farm workers on their own land.

As of October 2016, the Freight on Board (FOB) price of Philippine bananas ranges from US$ 4.00 to US$ 8.00 per box of 13.5 kilograms.\(^{10}\) According to the Philippine Exporters Confederation-Davao, prices of banana per box are now reaching almost US$10.\(^{11}\)

While the quoted prices sound optimistic, the reality for some farmers on the ground, based on the 2013 IDEALS and Oxfam study, remains different, with box prices ranging from US$ 3.00 to US$ 4.05 for the year 2013.
Interviews with various members of agrarian reform cooperatives and farmer associations made during the 2013 IDEALS and OXFAM study revealed absolute dissatisfaction with the prices received for the bananas grown for various corporations. Unfortunately, banana growers are locked in fifteen to twenty five year contracts, with very little – if at all – room for contract renegotiations.
A CLOSER LOOK AT AVAS

Agribusiness venture agreements (AVAs) have become a common resort for farmers and farmer’s organizations seeking access to capital for the operation and management of their farms. These agreements were already recognized and promoted by the State in the early years of implementation of the Comprehensive Agrarian Reform program as a way of letting the private sector assume the State obligation of providing support services to CARP beneficiaries. As early as 1988, the DAR had issued guidelines pertaining to the processing, approval and monitoring, validity, execution and implementation of such agreements.

Despite the existence of these so-called guidelines, it is still not uncommon among many agrarian reform advocates to encounter numerous cases of grossly disadvantageous AVAs between ARBs and multinational export companies and large traders. The 2013 IDEALS’ study identified the specific contractual mechanisms utilized to ensure optimum profits for the company-investors and with the farmers assuming all the risks of production and even of marketing, policy gaps in the processing, approval, execution and monitoring of the contracts, and the organizational, technical, and financial weakness of farmer cooperatives that were taken advantage of in the current framework of contract farming.

HIJO AGRARIAN REFORM BENEFICIARIES COOPERATIVE

Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO), whose 724 members are agrarian reform beneficiaries (ARBs) and former employees of Hijo Plantation Inc. (HPI) entered into a 10-year Banana Sales and Marketing Agreement (BSMA) with its former landowner, HPI.

Under the BSMA, HARBCO agreed to sell, and HPI/LFC agreed to buy all Cavendish Bananas produced by HARBCO’s 579-hectare land that meet the specifications and quality standards agreed upon by the parties at the execution of the contract.

Under the agreement, all banana produce of HARBCO, which meet the agreed specifications and quality standards are to be sold to LFC at a set contract price regardless of any changes in the market price. All 579 hectares of HARBCO’s banana plantation continue to be under the operational control of LFC, with the latter managing all aspects of farm operations – from support services to actual field operations. As of 15 July 2012, HARBCO is alleged to still owe LFC a total amount of PHP 175,834,473.30 in addition to the original balance of Php 114,963,256.55. HARBCO members, collectively the owners of the banana plantation, are employed by LFC as project employees for the operation of the banana plantation and have access to the property only upon the permission of LFC. HARBCO has filed a resolution to the Presidential Agrarian Reform Commission appealing for intervention to the crisis brought about by HARBCO’s onerous contract with LFC.

The main issue for current problematic situation of HARBCO is the signing and execution of the grossly disadvantageous BSMA with HPI/LFC, the former landowner. One of the most controversial and inequitable provisions in the contract is the “Takeover Clause” which granted LFC the right to take over and handle the farm operations of HARBCO if it deemed that “the success of the crop is endangered” by HARBCO’s failure to follow LFC’s “prescribed cultural practices.”

Different types of grossly disadvantageous contractual mechanisms written into the contract between HARBCO and LFC were surfaced, which include among others:

1. **Financial control devices that guaranteed HARBCO’s full dependence on LFC and LFC’s near-absolute control over the cooperative’s financial health.** LFC’s hold over HARBCO’s finances is cemented by the following contractual devices:
a. A price control mechanism where LFC is free to impose a set price on HARBCO, regardless of production costs and actual market rates.

b. Provisions allowing for unbridled increases in production costs without prior approval of HARBCO.

c. Contractual restrictions on property rights further incapacitate HARBCO from sourcing other income.

2. Skewed language of contractual provisions. The actual syntax and wording of crucial contractual provisions reveal a clear bias in favor of LFC.14

a. In stark contrast to the provisions relative to LFC’s obligations, contractual provisions which detail HARBCO’s obligations to LFC are strictly-phrased.

b. Certain provisions in the contractual documents are also vaguely worded, leaving too much room for different interpretations. This is most troubling in the case of the takeover clause found in Art. X (1) of the BSMA which is unclear as to the specific grounds or instances when the Buyer (LFC) may invoke the right to handle or take over the Seller’s (HARBCO) farm operations. The same degree of ambiguity or vagueness attends the price review provision in the BSMA.

3. No effective and immediate remedy against abuses. The absence of any effective remedy or safeguard to protect HARBCO from any potential abuses on the part of LFC gives LFC sufficient power to drive the cooperative into bankruptcy, dispossess it of its land, shortchange it of the rightful price for its banana produce, and even deprive HARBCO members of their employment and living income.15

4. Provisions contrary to law. The BSMA and GFFH both contain provisions that may be directly attacked as void for being contrary to law and public policy.16

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**DAVAO FRUITS CORPORATION**

The DFC case study documented the experiences of five (5) separate organizations/groups of banana growers, namely: Selecta Farms, Best Liberty Farms, United Banana/Goodwill Farms, Davao Fruits Corporation Agrarian Reform Beneficiaries Cooperative (DFC-ARB-CO), and Davao Fruits Corporation Agrarian Reform Beneficiaries Association (DFC-AR-BA). All five groups have existing and identical contracts for the production and supply of export bananas to Sumifru.

Of these five organizations, DFC-ARBCO, DFC-ARBA and United Banana/Goodwill Farms are comprised of agrarian reform beneficiaries to whom Certificates of Land Ownership Awards (CLOA) have already been issued by the Department of Agrarian Reform (DAR). The landholdings represented by the CLOAs issued to these ARB organizations consist of lands formerly owned and voluntarily sold to the government by the Davao Fruits Corporation.

Selecta Farms and Best Liberty Farms do not yet possess any CLOAs, and are comprised of farmer-growers contracted by Sumifru to manage banana-producing lands that the latter claimed to have possessory rights.
The following are the most glaring issues apparent from a perusal of the DFC contracts with Sumifru:

1. Company as exclusive provider of production inputs. This frees the company from any obligation to undergo a bidding process or to canvass for the lowest possible supplier. Since the company does not have a direct economic interest in keeping the costs down, the growers may find themselves burdened with exorbitant costs from overly-expensive suppliers.

2. Highly opaque pricing of inputs and other farm related expenses. The company solely decides, without providing the basis, of the prices of the inputs.

3. The company has absolute control on the classification of the banana produce, whether they are Class A or B. The contract affords no opportunity for the grower to contest the classification made by the company.

4. Unilateral and absolute discretion on the part of the company to change the prices of the banana produce.

5. Imposition of risk sharing provisions on the contract with the farmers assuming all the risks of production and marketing of the goods.

6. Inclusion of a “takeover clause” as a Company-initiated intervention mechanism that authorizes the Company to intervene and take over the management and operations of the farm upon the occurrence of any of the enumerated and loosely constructed grounds.

7. One-sided rescission, cancellation and pre-termination clauses in favor of the Company. It is only the Company that can exercise the right to rescind, cancel and pre-terminate the Exclusive Production Sharing Agreement.

8. Automatic renewal clauses in most contracts it had with the agrarian reform beneficiaries. In the tripartite agreement it had with LBP and the growers for the latter to avail of rehabilitation loans, a clause was incorporated wherein the growership contract will continue, despite the termination of its term, if the grower will have outstanding loan to LBP or unpaid debts to the company. The impact of the clause is that the growership contract-- no matter long and burdensome it is-- will last as long as the farmer has unpaid debts to the company.

HARBCO undertook legal actions and strategies against LFC. The main issue for HARBCO is the status of the petition for the revocation of the “onerous” contract that their organization signed with the Company. HARBCO affirms that the BSMA with LFC is inequitable and disadvantageous and should be considered null and void. A joint congressional committee looking into the anomalous contracts between the agrarian reform beneficiaries and their investors supported the stand of the HARBCO. The committee issued a recommendation, which among others, called for the revocation and nullification of the HARBCO contract with Lapanday.
Issues and Findings

Based on the review of the HARBCO and DFC contracts, there are a number of reasons why banana farmers have not realized the gains from owning their own land and entering into growership or marketing agreements with large corporations. These are:

1. No standard price guides and lack of reliable information on fair market prices.

   Government regulation requires parties in growership contracts, including those in the banana industry, to follow this provision set forth in the Department of Agrarian Reform Administrative Order No. 9-06:

   “The production/contract growing/growership/marketing contract shall stipulate the terms of sale which shall include the quality, quantity, and price of agricultural produce to be bought by the investor”.

   However, a review of the AO reveals that there are no guidelines given for the parties to arrive at a fair price. As a result, when farmers appear at the negotiation table, they have no base price to work with other than their knowledge of the prices received by cooperatives in neighboring farms.

   While this information may be useful, it is at best arbitrary, and does not create a legal obligation for the corporation to adhere to such as part of the contractual agreements.

   The lack of government and industry standard for setting prices in the banana industry greatly encourages that take-it-or-leave-it attitude that prevails among corporate buyers. As the weaker party in most contractual negotiations, farmer-cooperatives are often left with no other choice but to accept unjust terms.

2. Price review mechanisms do not work, are vaguely worded, or ignored.

   Government regulation requires parties to incorporate a price review mechanism in growership contracts.

   However, as stated in the contracts reviewed, price reviews depend solely on the parties bound to the contract: the farmer-cooperative and the investor-corporation. Most of the time, these are not carried out because the information needed to change the prices in the contract is unavailable. Information on the prevailing prices (including imported farm inputs) is not easily accessible, or not published, or undisclosed to the farmer-cooperatives.

   Unfortunately, since the process of price reviews are regarded as a contractual matter, farmer-cooperatives are forced to file cases and invoke a breach of contract. But this is a remedy seldom resorted to because farmers cannot afford to bear the cost of litigation.

   Without a working price review mechanism, farmers do not benefit from any price increase in the world market while contending with increasing costs of production and other farm related expenses.

3. Unilateral changes to the buying price of bananas

   The stipulated price wherein the Company commits to buy the Class A bananas of the Grower is not fixed. The company has been granted the unbridled authority to unilaterally change the contract price of the banana. The circumstances warranting the change of the purchase price are not provided for under the contract.

   For the Class B bananas, the company can change the purchase price of Class B bananas when circumstances warrant. The only limitation on the company for the change of the purchase prices is that it will be based on prevailing market prices. However, there is no benchmark of what price should be used if there are different prevailing market prices.
4. Farmers get net returns only after automatic deductions of various items (i.e. production costs)

Farmers get very little for every box of bananas that they produce. In fact, HARBCO even alleged that:

“Consistently, from December 2008 and up to the present, the gross sales, out from the purchases made by LFC of the bananas it actually produced from the HARBCO farms, have been less than the gross production costs incurred by HARBCO out of the same period.”

In the production of Cavendish bananas, for example, the estimated cost may be broken down into the following items:20

<table>
<thead>
<tr>
<th>Item</th>
<th>Percent of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Labor</td>
<td>36.9</td>
</tr>
<tr>
<td>Fertilizers</td>
<td>8.0</td>
</tr>
<tr>
<td>Pests and disease control materials</td>
<td>27.9</td>
</tr>
<tr>
<td>Propping materials</td>
<td>4.9</td>
</tr>
<tr>
<td>Bagging materials</td>
<td>6.1</td>
</tr>
<tr>
<td>Fuels, oils, lubricants</td>
<td>4.7</td>
</tr>
<tr>
<td>Depreciation</td>
<td>8.4</td>
</tr>
<tr>
<td>Overhead</td>
<td>3.1</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
</tr>
</tbody>
</table>

While the banana export industry is experiencing significant growth, many farmers are saddled by insurmountable debt.

For example, the Hijo Agrarian Reform Beneficiaries Cooperative (HARBCO) incurred debts amounting to almost P600 million with LFC, and its debts are ballooning every year LFC takes the management and control of the farm operations. In its petition filed before the Department of Agrarian Reform Presidential Agrarian Reform Council (PARC), HARBCO alleged that:

“This outstanding debt was more of the result of the unrestrained authority of LFC to incur production costs and expenses which the company is allowed to charge to the account of the HARBCO and deducted from the sales proceeds of the bananas of HARBCO, which are purchased by LFC based on its own price mechanisms.”

The cycle of debt is common. For example, some banana farmers in partnership with Sumifru (Philippines) who applied for financial assistance from the Land Bank of the Philippines have narrated that the company continues to charge certain production costs, including those spent for aerial spraying, despite the fact their farm operations stopped since December 2012, when Typhoon Bopha damaged their farms, up to the time of the interview on April 14, 2013.21

5. Debt-creating contractual provisions embedded in the contracts

Government regulations allow investors to “provide at reasonable cost, the technology and other farm inputs prescribed for the production of agricultural goods according to the quality standards set by the growership contract”.22

Furthermore, “The schedule of deduction and amounts representing the cost or value of the use of the technology, equipment, facilities, service and other farm inputs provided by the investor to the beneficiaries shall be agreed upon by both parties and shall be clearly stipulated in the contract.”

At a glance, these two provisions seem beneficial for the farmers. Often, they cannot afford to make advances or pay for farm inputs before they get paid for the harvest. Their corporate investor can make these advances and get paid through automatic deductions from payments due to the growers.
Unfortunately, while contracts do contain provisions enumerating what may be charged to the account of the farmers, provisions on the schedule and amount of such automatic deductions are absent.

Farmers have very little control over the actual cost of the materials because:

   a. They have very little information and/or access to reliable information on competitive market prices offered by other suppliers, and

   b. They only discover the real amount of charges if and when the companies send them the billing or financial records.

6. Absence of mechanisms to contest the amounts charged by the company-investors

One company included a transparency clause regarding costs chargeable to the growers. It states: "Documentations as to costs incurred during LFC's farm handling will be transparent and furnished to HARBCO."

While the transparency is appreciated, it does not include negotiations and consent before these costs are incurred. The farmers are simply informed that the company paid for certain material inputs and that the farmers are liable to pay for them at a certain amount, solely determined by the corporation.

7. Farmers are liable for losses beyond their control

For example, LFC requires the farmers to “replace bananas rejected in any port and/or by the foreign buyers on account of poor quality or non-compliance with the quarantine regulations, ‘yellow bananas’ or other conditions that necessitate their disposal”.23

This extension of liability for rejections made in foreign ports is unreasonable considering that LFC’s own contract allows them to reject the bananas “at any time prior to Buyer’s (LFC’s) acceptance of the bananas loaded on board the Buyer’s designated cargo truck.”24 The same provision exists in the Sumifru (Philippines) contract.

For many corporate investors and grower-farmers, an equal partnership still begs to be established. Practically speaking, corporate investors do not share their export gains with the farmers because purchase prices are pre-determined in the contract. Losses are borne solely by the growers.

Factors like shipping conditions, length of travel, and port handling affect the conditions of the bananas shipped to foreign markets. It is highly unreasonable for farmers to be made liable for damages to the crop that may be incurred due to factors beyond their control.

8. No specific provision for the conduct of an economic review

In the contract with Sumifru, the Grower is tied for the next ten (10) years to the buying price the company may impose without a provision for an economic review of the contract to address prices of the inputs, other production costs and increase in the world market prices for bananas.

The nearest the contract mentions about the economic review is under the Covenants, Representation, and Warranties wherein the Grower warrants the continuous supply and delivery of the Crops to the Company “even during an economic review based on the costs of materials and labor as mandated by law.”25 Without any specific ground for the conduct of any economic review, the Grower is powerless to negotiate for a better price that will sufficiently cover his production costs and ensure sufficient income for him and his family.

With an assured supply of bananas and without any stipulations on corresponding sanctions imposable on the parties who failed to faithfully comply with economic review, the Company can be expected to drag its feet to the bargaining table not only for the conduct of an economic review but for any change, modification, and alteration of the favorable provisions of the agreement.
9. Exemptions to pay the agreed buying price of the crops

The contract provides exemptions for the company to pay the agreed stipulated price during the occurrence of chop down conditions and in the event of expected market excesses. A chop down situation is an event when there are more bananas available than are demanded by the export market.

10. Quality standards of the banana produce are at the discretion of the company and no mechanisms are set in place to contest the findings of the quality assurance team of the company

The absence of grievance mechanisms to contest the classification of the quality assurance team of the companies puts the farmers at serious economic risks. A classification of a Class A banana (priced at $3.60/box) to a Class B (priced at $1.20/box) would clearly make the farmer a loser without any means to pay the high production cost of the farm. The sigatoka control (priced at $0.79/per box) and the manufacturing cost ($0.65/box) would make it impossible for him to make a profit.

11. Government has not exercised the regulatory framework it issued for the approval, review and monitoring of the contracts.

Almost all contracts reviewed show noncompliance with the requirements laid down by the Department of Agrarian Reform (DAR) for the processing, review and approval of the contracts. Those contracts with the nominal participation of DAR officials in their execution were not reviewed or monitored whether the economic conditions of the farmers are uplifted, as assured by the companies when the contracts are offered to them, or the parties have complied with the existing rules.
RECOMMENDATIONS

Lacking the knowledge to thoroughly review contracts and the regulations that govern their relationship with investor-companies, banana farmers will continue to suffer the direct effects of unfair pricing and cyclical debts. Instead of being able to elevate their economic status through productive use of their lands, they are bound to labor on their own lands under conditions of contractual slavery.

No matter how well the industry performs in the international and domestic trade arena, it must not be allowed to thrive if it cannot ensure fair, humane, and just conditions for the vital movers of its production chain: the farmers.

The food that we eat must reach our tables without sacrificing the lives and dignity of those that till the land and grow the things that nourish us. Contracts that violate human dignity and perpetuate injustice have no place in the modern world.

Thus, to safeguard the interests of the Filipino banana farmer and cement the gains of agrarian reform, government and other industry stakeholders should do the following:

**For the National Government**

1. Government, thru the DAR, must conduct a thorough review and monitoring of agribusiness venture arrangements (AVAs) entered into by agrarian reform beneficiaries (ARBs) to ensure compliance with the rules and that the welfare of the agrarian reform beneficiaries are protected. The DAR must also revise its AO 09-06 to create a level playing field between agrarian reform beneficiaries, their cooperatives, and other small scale holders and their contractual investors.

2. With the ever-increasing complaints against unfair contracts, government through the Department of Agrarian Reform (DAR), Department of Labor and Employment (DOLE), Department of Agriculture (DA), and the Department of Trade and Industry (DTI) – as CARP Implementing Agencies (CIAs) must jointly issue a regulatory framework governing AVAs and ensure its compliance by the parties. The framework must cover land tenure, sustainable use of environment, respect and observance of labor laws, investments on land, quality standards assurance, and viable economic growth for the industry.

The government must check regularly the parties’ compliance to the rules and regulations governing AVAs.

The DAR and the Presidential Agrarian Reform Council should revoke and nullify all AVAs contracts that are detrimental to the farmers and failed to meet the objectives of agrarian reform.

3. Women are an integral part of farmers’ organizations, but they have little say on how these organizations (or cooperatives) are run. Thus, it is imperative that gender responsive provisions are included in government policies on investments on agriculture, land, food security and poverty reduction.

4. Government should encourage agribusiness companies to adopt inclusive, responsible, and sustainable business through the grant of incentives and awarding of citations to compliant firms.

5. Farmers must receive regular training and technical/capacity building support so that they can improve the quality of their produce.

The rules of the international agricultural market are constantly changing and consumers are becoming more discerning. For the Philippine banana industry to remain competitive, farmers must constantly adjust to the demands of the market in terms of quality standards.
Farmers must be capacitated on financial recording system in monitoring their financial operations. Coupled with access to information on the prices of farm inputs and other production costs, growers can contest the reasonableness, correctness and foster accountability on the billing charges they received from the Company. As farmer-cooperatives, this responsibility falls under the government's Cooperative Development Authority (CDA), which has modules on financial recording and monitoring.

Knowledge on the basics of contract law, commercial transactions and current regulatory framework should also be imparted to the Growers for them to know their rights and obligations and when and where to seek remedies in cases of their breach by their respective contracting parties.

**For Private Sector Exporter Companies**

1. Banana exporters should realize that their lifeblood lies in their farmer-cooperative partners. Thus, they should treat them equally and fairly. They already earn a substantial amount from their exports and should give their partner-farmers their due – a just and equitable price for the bananas produced.

2. Banana agribusiness companies to incorporate a corporate social responsibility framework that promotes fairness, transparency and equality to its contractual partners, the communities where they conduct business, to its suppliers and to other partners in the value chain. Exporters should look for suppliers that will offer a fair price for the farmers, since farmers are the ones who will pay for the services (e.g. fertilizers). There should also be a mechanism whereby farmers have a say on which suppliers will be approved to provide specific services.

3. Banana agribusiness companies to adopt inclusive, responsible and sustainable business.

**For Banana-Farmer Producer Cooperatives**

Banana growing cooperatives should realize that they are the lifeblood of the industry. They should not surrender the control and management of their farms to corporate investors. They should demand from their contractual investors a high degree of transparency, accountability and fairness in the implementation of their contracts.

1. Banana farmers should organize themselves into associations for mutual protection and proactively support and participate in its activities. There should be vigilance always to protect their interests. Banana farmers should scrutinize each and every move their partner exporters make. The farmers should make sure that mechanisms are in place for vetting and approval of suppliers, since they are the ones paying for it. If possible, they should be the ones to look for suppliers.

2. Farmers should equip themselves with the necessary skills to run their farms plantation as a business. They should think and act as businessmen. Trainings are available from the CDA, DTI and cooperative networks. They should actively seek these trainings.

3. As women are an integral part of the organization or cooperative, they should be part of the cooperative’s governance and decision-making.
NOTES

1 Promusa website (http://www.promusa.org/)


3 HB No. 5161

4 Not his real name to protect his identity

5 Department of Agrarian Reform Administrative Order No. 4-16, June 6, 2016.


7 Promusa website (http://www.promusa.org/)

8 Philippine Banana Industry: Challenges and Priority Actions, Jennifer E. Remonquillo (OIC, National Program Co-ordinator for High Value Crops Development Program-Department of Agriculture). November 7-8, 2012

9 Promusa website (http://www.promusa.org/)

10 http://www.tradekey.com/


12 Interviews conducted by IDEALS on 15 and 16 October 2014 with HARBCO and DFC cooperative-members

13 Redirecting investments and benefits towards small-scale farmers and agrarian reform beneficiaries, IDEALS report to OXFAM, unpublished.

14 Ibid

15 Redirecting investments and benefits towards small-scale farmers and agrarian reform beneficiaries, IDEALS report to OXFAM, unpublished.

16 Ibid

17 Redirecting investments and benefits towards small-scale farmers and agrarian reform beneficiaries, IDEALS report to OXFAM, unpublished.

18 Department of Agrarian Reform Administrative Order No. 9-06, December 8, 2006.

19 Based on provision of Contracts reviewed during IDEALS’ second study.


21 Supra note 10.

22 Supra note 11, Section 5.2.2

23 Supra note 14, Part IV, k.

24 Id, at Part IV, j.

25 Sec. 2.3, EPSA
Initiatives for Dialogue and Empowerment through Alternative Legal Services (IDEALS) Inc. is a legal-focused advocacy and service institution organized to address the legal and technical needs of the marginalized, disempowered and vulnerable groups, particularly the agrarian reform beneficiaries (ARBs), farmer-traders, migrants sector of society and recently the persons & communities affected by disasters. It envisions a Philippine society with an empowered citizenry sustained by participatory and accountable governance, equitable enjoyment of resources and opportunities, and accessible justice. It aims to empower the marginalized sectors, and with them, work for a policy and legal environment oriented towards the realization of their rights and participation in governance in the fields of resource tenure, trade and migration. The organization has four (4) core programs, namely, the Land Rights, International Trade, Legal Equity, and Access to Benefits and Claims after Disasters (ABCD).

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