



The new conquistadores and one very willing colony: A discussion on global land grabbing and the Philippine experience



AR Now!



INTERNATIONAL
LAND
COALITION



Our Mission

A global alliance of civil society and intergovernmental organisations working together to promote secure and equitable access to and control over land for poor women and men through advocacy, dialogue, knowledge sharing and capacity building.

Our Vision

Secure and equitable access to and control over land reduces poverty and contributes to identity, dignity and inclusion.



AR Now!

The People's Campaign for Agrarian Reform Network (AR Now!) is an advocacy campaign center and coalition of people's organizations and non-government organizations working for the promotion and implementation of agrarian reform and rural development in the Philippines. AR Now! was established in January 1997 to primarily drum up public support for the fast tracking of the completion of the land acquisition and distribution components of the Comprehensive Agrarian Reform Program (CARP); to ensure Congressional budgetary support for CARP; to document and popularize the impact of CARP; and to conduct policy research and advocacy in support of the agrarian reform campaign.

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ILC would appreciate receiving copies of any publication using this study as a source.

Foreword

The International Land Coalition (ILC) was established by civil society and multilateral organisations who were convinced that secure access to land and natural resources is central to the ability of women and men to get out of, and stay out of, hunger and poverty.

In 2008, at the same time as the food price crisis pushed the number of hungry over the one billion mark, members of ILC launched a global research project to better understand the implications of the growing wave of international large-scale investments in land. Small-scale producers have always faced competition for the land on which their livelihoods depend. It is evident, however, that changes in demand for food, energy and natural resources, alongside liberalisation of trade regimes, are making the competition for land increasingly global and increasingly unequal.

Starting with a scoping study by ILC member Agter, the Commercial Pressures on Land research project has brought together more than 30 partners, ranging from NGOs in affected regions whose perspectives and voices are closest to most affected land users, to international research institutes whose contribution provides a global analysis on selected key themes. The study process enabled organisations with little previous experience in undertaking such research projects, but with much to contribute, to participate in the global study and have their voices heard. Support to the planning and writing of each study was provided by ILC member CIRAD.

ILC believes that in an era of increasingly globalised land use and governance, it is more important than ever that the voices and interests of all stakeholders – and in particular local land users - are represented in the search for solutions to achieve equitable and secure access to land.

This report is one of the 28 being published as a part of the global study. The full list of studies, and information on other initiatives by ILC relating to Commercial Pressures on Land, is available for download on the International Land Coalition website at www.landcoalition.org/cplstudies.

I extend my thanks to all organisations that have been a part of this unique research project. We will continue to work for opportunities for these studies, and the diverse perspectives they represent, to contribute to informed decision-making. The implications of choices on how land and natural resources should be used, and for whom, are stark. In an increasingly resource-constrained and polarised world, choices made today on land tenure and ownership will shape the economies, societies and opportunities of tomorrow's generations, and thus need to be carefully considered.

Madiodio Niasse

Director, International Land Coalition Secretariat

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Summary

Since 2007, the Philippines has seen a spate of large scale land acquisition by foreign corporations or governments. The most notorious, which had to be suspended in the face of popular opposition and legal challenges, is a deal concerning 1 million hectares between government ministries and a Chinese consortium (in the RP-China deals). Another deal concerns 1 million hectares between Chinese and Philippine corporations, with Philippine government support. As many as 5 other deals concerning between 10,000 and 200,000 hectares have involved mostly Gulf States. Many smaller deals may escape scrutiny.

These deals have been challenged for a variety of reasons. The main RP-China deal has been stalled by constitutional provisions limiting the leasehold of public land by foreign entities. A more fundamental problem with the deals taking place is that they threaten to reverse the gains of the Land Reform Program. Reform beneficiaries, in an weak bargaining position, are in danger of being pushed to lease land to corporations on disadvantageous terms. It is also feared that the lease of land to corporation, particularly for the production of biofuels, will allow large land owners to evade the implementation of the Agrarian Reform Program which must be completed within a limited time span. There are also concerns that the widespread conversion of crop land to food production for export and biofuel production will increase national food insecurity. The report presents a proposed Bill to regulate the large-scale acquisition of agricultural land by foreign investors.

1 Introduction: The Philippines' experience in the global context

The phenomenon of global land grabbing came to being as a series of countries rich in capital yet capital relatively poor in agricultural resources, realised the vulnerability of being dependent on food imports from the open markets. China, with only 7% of the world's farmland but 22% of its population, is reported to have recognised the problem a decade ago as it surveyed the impact of increasing urbanisation.¹ For Arab states, by contrast, the food crisis of 2008 is seen as the wake-up call.

The response has been a phenomenon – also sometimes known as “agri-colonialism” – wherein such countries take over tracts of arable land in developing countries, usually for the purpose of meeting domestic consumption requirements or for the production of alternative fuels. Since 2006, the International Food Policy Research Institute reports that 37 million to 49 million hectares of land in poor countries, valued at \$20 to \$30 billion, were sold or under negotiation for sale to foreign buyers (The Economist, 2009). In 2009 alone, the World Bank was quoted as saying that it believes it imperative to come up with a code of conduct for both host countries and investor countries. According to Juergen Voegele, the World Bank's Director for Agriculture, the bank would “provide guidance to long-term sustainability and the social and environmental implications”. (Blas, 2009).

The Saudi Gazette (Seale, 2009) gives a random sampling of these deals in an article aptly titled “Solving threat of hunger for rich may starve the poor”:

“Saudi Arabia, for example, has already secured 1.6 million hectares of agricultural land in Indonesia. As it is phasing out its own wheat production to conserve finite water resources, it is planning to invest heavily in agricultural projects abroad. A state-owned organization – the Saudi Company for Agricultural Investment and Animal Production, with an initial capital of \$800m – is trying to interest private Saudi investors in foreign farm projects by providing credit and by negotiating deals with Australia and Argentina, as well as with countries in Africa, Asia and Eastern Europe.

¹ See “China's Farmland Loss Rings Serious Alarm.” A Report from US Embassy Beijing June 1997. Available at <http://www.fas.org/spp/guide/china/earth/landloss.htm>

Many such contracts have been concluded or are in prospect. Something like a worldwide scramble for land is taking place. The United Arab Emirates has secured 1.3 million hectares overseas, mainly in Sudan and Pakistan. Indeed Pakistan, according to a Reuters report this week, has offered to sell or lease large tracts of farmland to countries anxious to secure their food supplies. Qatar has land holdings in Indonesia; Kuwait has similar holdings in Burma; while Libya is about to sign a large contract for farmland in Ukraine. Jordan has set its sights on Sudan. South Korea – a resource-poor but heavily populated country – has acquired over one million hectares in Sudan, Mongolia, Indonesia and Argentina.”

Many critics, however, have sounded off the warning that outsourcing land has only outsourced the problem of food insecurity – in most cases, if not all, to countries that are less capable of addressing, and are in fact already dealing with, persistent issues of poverty and rural hunger. While there are countries whose citizens have lauded the entry of foreign investors and see in it a potential for income and livelihood improvement, populations in other countries have not been too happy. In Madagascar, for example, violent protests broke out when the government announced that it had been negotiating with the South Korean company Daewoo for the lease of 1.3 million hectares of its lands.

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 dispossessed completely or, in the case of those who are title holders, become relegated to the status of farmworkers and tenants again.

This may not be a conjured-up phantom – it is estimated that one million Chinese farmers will be sent to Africa to work in acquired lands (The Economist, 2009), thereby displacing the original tillers. According to the IIED (Cotula *et al*, 2008), in Brazil the lease of land for biofuel production has resulted in widespread displacement. Large scale farms used to grow soy beans and sugar cane have displaced farmers who rely on small-scale farming to meet daily needs. Further, “where conflicting resource claims exist among local resource users, governments and incoming biofuels producers, and where appropriate conditions are not in place, the rapid spread of commercial biofuel production may result – and is resulting – in poorer groups losing access to the land on which they depend.”

Another fear is that global land grabbing may result in massive food insecurity, as domestic consumption requirements are sacrificed in order to meet foreign demands. It may be expected, for example, that the price of food commodities will spiral when more lands are devoted to biofuel production resulting from foreign contracts, and less lands are used for food. With weak or no regulation from third-world governments eager to snatch up investments, and even, perhaps, party to under-the-table deals, long-term food

sustainability is threatened and protections on agricultural lands are ignored or even brazenly flouted.

This could well result in the bizarre situation wherein underdeveloped countries with an agricultural base will be forced to import food commodities whose raw materials were sourced in their own backyards. The irony and injustice would be that while peoples from rural areas in the third world will be malnourished due to the prohibitive cost of food right outside their window, vast tracts of agricultural land are being utilized to provide the food needs of those in the more developed parts of the world.

These concerns surrounding the global phenomena of land grabbing set the context for examining the emerging trend of land grabbing in the Philippines and the likely impacts this will have. Foreign investment in land resources in the Philippines has so far taken a somewhat different form from many large scale deals in Africa and elsewhere, largely because of sections in the Philippine Constitution that limit foreign control of land. Land grabbing has thus mostly taken the form of lease agreements between corporate entities and many small and medium-sized landowners. This raises various causes for concern, not least the asymmetry of bargaining power between corporations and smallholders, and the possibility provided by leasing deals for larger landowners to stall efforts at implementing agrarian reform. Nonetheless, the provisions of the Constitution notwithstanding, the government of the Philippines has also sought to agree and promote joint venture agreements providing foreign corporations with agricultural lands on very large scales.

Scope of this report

This paper will attempt to examine the land grab phenomenon in the Philippine context. It will explore the different instances of land grabbing in the Philippines and some of the documented cases and transactions involving the same. It will also analyse the policy framework that enables and engenders this phenomenon, and identify the gaps and conflicts in the laws that must be resolved. In as much as this paper wishes to be as comprehensive as possible and present a complete map of land grab occurrences in the Philippines, the insufficiency of data and the absence of a centralized repository of all land transfer transactions entered into with foreign corporations make this an impossible task. Instead, this paper relies on information made available by the Department of Agriculture (DA), media reports and actual reported cases on the ground.

What this paper wishes to accomplish is an evidence-based critique of land grabbing in the Philippines, with the end in view of contributing towards the call to revisit and revise existing policies by putting forward its own policy recommendations.

2 The national context: the crisis of agriculture

The Philippines has a land area of around 30 million hectares. According to an assessment of the agricultural situation by the Food and Fertilizer Technology Center, around 47% of this, or 13 million hectares are classified as agricultural lands². These 13 million hectares may be further divided into land devoted to food grains, food crops and non-food crops. Food grains are reported to occupy 31% of this area (4.01 million hectares), food crops 52% (8.33 million hectares), while 17% (2.2 million hectares) are used for non-food crops. For food grains, the average area utilized by corn has been estimated at 3.34 million hectares, with rice occupying 3.31 million hectares. Of the food crops, coconut is estimated to account for 4.25 million hectares and sugar cane for 673 thousand hectares. These figures give some idea of the scale of the total resources available to the competing claims of food production for domestic and foreign markets, and for non-food uses such as biofuels.

It is important to understand the Philippine backdrop on which the phenomenon of land grabbing is foisting itself – an agricultural sector that has declined in national importance and long suffered from policy neglect. More than fifty years ago, agricultural, agrarian reform and fisheries comprised 40.4% of the GDP, the largest piece of the pie. By 2004 it had declined to 18.8% of Gross Domestic Product (GDP). The trend is made clearer by the Philippines' increasing dependence on rice importation, with rice imports ballooning to 2.1 million metric tons during the food crisis of 2008 (Freedom from Debt Coalition, 2008:1).

The causes of this alarming trend could not be reduced to one single factor, for indeed, it was the outcome of an amalgamation of factors including the utter lack of government support for agriculture that resulted in inadequate irrigation and infrastructure, unabated conversions and reclassifications of land, the gaps in the implementation of the agrarian reform program, natural calamities, and the insufficiency of regulations in trade liberalization that has made agricultural investments a not too profitable enterprise. To give one example, the Freedom from Debt Coalition (2008) reports that government expenditure for agriculture, agrarian reform and fisheries has declined from a high of \$208.35 million in 1997 to a low of \$104.91 million just ten years later in 2007.

When juxtaposed against this contextual backdrop and taking into account existing problems of rural poverty and widespread hunger, lease arrangements with foreign corporations, even with the potential investment it might bring, spell a dangerous

² See "Agricultural Situationer in the Philippines", available from the Food and Fertilizer Technology Center at <http://www.agnet.org/situationer/philippines.html>

proposition. While these lease arrangements may appear to resuscitate a sector in dire need of resuscitation, the eagerness to latch onto a global trend with no safety nets or sustainable strategies may well result in a problem far bigger than the problem which it sets out to solve. Left unregulated and unabated, it is not difficult to contemplate a scenario wherein a significant percentage of agricultural lands are in the hands of foreign investors, dramatically reducing the proportion of produce retained for domestic consumption.

3 Large-scale land deals in the Philippines

The deals

The most notorious example of global land grabbing in the Philippines is the Republic of the Philippines (RP)-China agreements. This bundle of agreements – thirty one in all – was entered into with the People’s Republic of China in January 2007. Of these thirty one agreements, 18 are agri-business agreements, one of which would have allowed the lease of 1 million hectares of land in the Philippines had the Department of Agriculture not decided to unilaterally suspend it following massive public outrage, a series of Congressional inquiries and a case filed before the Supreme Court raising grounds of unconstitutionality. The full list of the agriculture and fisheries related agreements can be found in Table 2 in Annex 1.

The notorious deal involving the lease of 1 million hectares was a “Memorandum of Understanding on Construction of Agriculture Technology Transfer Center and Grain Production and Processing Base in the Philippines (for hybrid corn, hybrid rice and sorghum farming)”, between three Philippine government departments and, on the Chinese side, the People’s Government of Jilin Province, China Development Bank, and Jilin Fuhua Agricultural Science and Technology Development Co. Ltd.

The second most controversial of the agreements is for the “Joint Development of Renewable Energy Project” involving the lease of 40,000 hectares. of land for sugarcane and cassava for biofuel production. Again, it is a bilateral agreement between the Philippine departments and, this time, the Agricultural Department of the Guangxi Zuang Autonomous Region. There are also four joint venture agreement between Philippine and Chinese companies related to ethanol (biofuel) production. At least one of these envisages the planting of 10,000 hectares of sugar cane. The remaining agreements do not, apparently involve large scale land acquisition or leasing. Six cover projects related to fisheries.

While the RP-China deals are perhaps the most controversial of all the agreements and are often the most cited because of their sheer scale, they are by no means the only transactions entered into with foreign corporations involving prime agricultural land in the Philippines. Table 3 in Annex 1 is a matrix of a sampling of agri-business investments recorded by the Department of Agriculture. This matrix does not include agreements that were entered through private arrangements, via local government units, and other unrecorded transactions that have escaped national scrutiny.

The most dramatic of these other deals is and Memorandum of Understanding (MoU) signed in 2008 between San Miguel Corporation and the Kuok Group of Companies for the “Development of green areas into food production areas along with the establishment of logistics, post-harvest and processing facilities for the raw crop produce” (San Miguel Corporation, 2008), with the support of various Philippine government bodies. The deal envisages the use of 1 million hectares of government land under supply and purchase, corporate farming, lease and co-management agreements.

Other deals include:

- A 100,000 hectare joint venture, lease and corporate farming agreement with Qatar for rice production.
- A 200,000 hectare joint venture with Saudi Arabia for rice and corn.
- A 10,000 hectare joint venture, lease and co-management agreement with Brunei for rice.
- A 10,000 hectare joint venture and lease agreement with Oman for rice.
- A 20,000 hectare joint venture and corporate farming agreement with Kuwait for rice and corn.

The Department of Agriculture, through the Philippine Agricultural Development and Commercial Corporation (PADCC) is key is playing a role of identifying and matching “available” land to prospective agribusiness investors. Table 1 below summarises the lands to be matched by the PADCC to foreign investors' requests for land.

Table 1: Areas to be matched by PADCC for investments by foreign agri-business corporations

Location	Area matched (consolidated, ha.)
Philippines	1,997,642.16
Northern Luzon Agri-business Quadrangle	638,820.07
Region I	80,154.72
Region II	512,093.47
CAR	46,571.88
Luzon Urban Beltway	390,242.41
Region III	131,217.83
Region IV-A	23,301.47
Region IV-B	235,723.11
Central Philippines	385,659.67
Region V	117,555.05
Region VI	48,782.18
Region VII	114,133.44
Region VIII	105,189.00
Agribusiness Mindanao	582,920.00
Region IX	30,867.00
Region X	78,850.00
Region XI	279,274.00
Region XII	109,169.00
Region XIII	66,177.00
ARMM	18,583.00

Source: Agbon (2009).

The controversy surrounding the land deals

According to the Department of Agriculture, as part of the 1 million hectare deal entered into with the Jilin Fuhua Corporation as part of the RP-China deals, the latter has committed an infusion of funds and investment to the tune of \$3.84 billion. It is not difficult to see, therefore, why the current Philippine Secretary for Agriculture Arthur Yap and President Gloria Arroyo was crowing about the deal with China and its purported benefits to the Philippine economy.

Upon closer scrutiny however, the terms of the agreement do not quite carry the promises it purports to hold. Most glaringly, it uses the phrase “lands lawfully owned by the Philippines” – a classification that is non-existent in the Philippine legal jurisdiction, which recognizes only lands of the public domain (which may further be classified into agricultural land, forest land, mineral land and national parks) and private lands. If lands of the public domain are contemplated, the Constitution prohibits foreign ownership under Section 2, Article XII, of the 1987 Philippine Constitution.

Only one classification of public domain lands is susceptible of disposition, and this involves agricultural lands of the public domain. However, the particular constitutional provision is clear that it may only be leased by, or sold or transferred to Filipino citizens (Section 3, Article XII, see section 5 below).

In short, until the Constitution is revised, the particular agreement involving the lease of land “lawfully owned by the Philippines” – assuming it contemplates lands of the public domain – is patently illegal and the government officials who transacted on behalf of the Philippines acted outside the pale of their powers.

Moreover, while the government has claimed that investments would flow into the country by virtue of the agreement, a closer perusal of the text reveals that it does not actually say so. On the contrary, it states that Fuhua Co. undertakes to “establish a credit platform company and organize the implementation of the project and loans repayment.”³

This of course begs the question: what is the role of the credit platform company, and what loans need repayment? In Item II.8 of the Agreement, Fuhua Co. undertook to provide “provide funds, seeds, technologies, fertilizers, equipments and other agricultural inputs and other requirements for implementing the Project”. While this \$3.84 billion investment is portrayed as if it was a gift to the Philippines, it is clear that it is a commercial loan. Hard questions need to be asked about how this investment will really create a

³ See *Memorandum of Understanding on Construction of Agricultural Technology Transfer Center and Grain Production and Processing Base in the Philippines (for hybrid corn, hybrid rice and sorghum farming)*, <http://rpchina.blogspot.com/>

capability for repayment that did not formerly exist and that justifies the taking on of such a huge liability by the country.

Similar criticisms may be levelled at the second most controversial agreement, the Agreement with the Agricultural Department of the Guangxi Zuang which involves the lease of 40,000 hectares – the terms of the agreement are so patently unclear that they may be susceptible to interpretation not intended by the original transacting party for the Philippine government.

As stated, the Department of Agriculture has been forced to suspend the 1 million hectare deal with Jilin Fuhua Corporation following public outrage, Congressional inquiries and a case filed before the Supreme Court. The smaller agreements, however, are private agreements between private corporations and are not subject to the same issue of constitutionality. They have not been suspended. It can be expected that their implementation is in progress.

4 The threat to agrarian reform

Seen from a land rights perspective, the phenomenon of global land grabbing raises important questions about the welfare, livelihoods and tenure security of impoverished farmers and farm workers in the country, questions that cannot be ignored in light of the fact that “of the 26.5 million poor people in the country in 2000... 7.1 million were urban and 19.4 million live in rural areas. In other words, nearly 75.6% of the poor are rural poor” (Borras *et al.*, 2007: 119).

Agrarian reform was envisioned as a measure to correct historical injustices against the farmers and to reverse the centuries-old iniquities in land ownership, as well as to stem rural poverty and uplift the lives of peasants in the countryside. By and large, two decades of land reform in the country has resulted in many gains and has clinched many victories, but the struggle for land still faces much opposition from a potent combination of landed elite interests, inefficient bureaucracy and a neo-liberal policy regime that leaves agricultural production to the vagaries of a fickle market (Carranza and de la Cruz, 2009).

It is argued that the phenomenon of global land grabbing, if allowed to go full throttle and unabated, will reverse the gains of agrarian reform and render nugatory all previous initiatives and efforts towards reconfiguring land ownership in the country.

Reversing agrarian reform

Firstly, instead of addressing the root causes of rural poverty, it takes advantage of it in order to further the profit-driven objectives of the investor, and results thereby in a scenario exactly the opposite of what agrarian reform contemplated. For example, according to field interviews conducted by the Center for Agrarian Reform Empowerment and Transformation, Inc. (CARET, Inc.), in Biliran, a poor province in Region VIII, agrarian reform beneficiaries were approached by government officials from the Philippine National Oil Company and the Department of Agriculture to persuade them to lease their landholdings to a foreign corporation for jatropha production. The offer allegedly was PhP. 5,000 (just a little bit more than \$100) a year, per hectare, locked in for 10 years. This would mean that for a period of ten years, no other crops may be planted in the leased landholding except jatropha. To sweeten the deal, the farmers were promised that they would be paid the full amount of PhP. 50,000 upfront upon signing the contract.

Considering that these agrarian reform beneficiaries, despite being holders of Certificate of Land Ownership Awards (CLOA), still live below the poverty line and find that post-

distribution support services of the government are wholly inadequate to make their lands productive, an offer of PhP. 50,000 will be difficult to refuse. Most, if not all, of them, have not seen that amount of money before and, pressured by mounting debts, will be tempted to grab the deal being dangled before them. And yet, PhP. 5,000 for one hectare per annum is unconscionably small, given the profits that the investor stands to earn from the cultivation of jatropha for biofuel production.

At the end of the day, in the example, the agrarian reform beneficiary would lose control of his landholding for ten years, for an amount of money that would probably be used up in two months. Worse, it is entirely possible that after ten years, driven further into penury, he or she is forced to give up his landholding for sale altogether, because the agrarian reform law allows sale of distributed lands after ten years.

Secondly, it can be observed that that foreign interest in land in the Philippines dovetails perfectly with the interests of the local landholding elite that want to circumvent land reform. For a long time, land reform has been resisted by traditional landowners who have used a plethora of methods, both legal and illegal, to thwart the agrarian reform program of the State. Now, the current policy framework provides them with yet another tool – entering into deals with foreign corporations, aided and abetted by the State itself.

In Bohol, for example, the local government has brokered deals between local landowners and a foreign corporation, with some deals covering over 100 hectares of land per landowner. Instead of investigating the anomaly of a single person laying claim to more than 100 hectares of agricultural land when the Comprehensive Agrarian Reform law allows only 5 hectares, the provincial government brokers the deals, and calls its efforts part of the province's poverty alleviation measures. Of course, this is also convenient for the foreign corporation that does not want to be embroiled in thorny issues of agrarian reform and would rather speak and negotiate with a monolithic entity.

Undermining food security

Secondly, the threat to food security would not be far behind when lands intended to be used for domestic agricultural and food production are used for either biofuel production or to meet overseas food consumption. It must be understood that while agrarian reform is a primarily a social justice measure meant to correct historical injustices to the farmers of this country, it also operates as a protection of food production on agricultural lands. By regulating the transfer of lands after they have been redistributed and prohibiting completely any disposition of the same within ten years, the Comprehensive Agrarian Reform Program (CARP) ensures, at least in a general sense, that agricultural lands remain agricultural. It is an “insurance policy” that guarantees that irrigated agricultural lands keep being used for the purpose for which they were intended: to serve as food baskets for an increasingly ballooning population.

Certainly, current policies on Biofuels contain provisions ensuring food security, but in practice, lands on which fruits and vegetables and grains are being planted are fast being transformed into biofuel production sites, and this is enabled, if not encouraged, by the national government and local government units.

Moreover, there is still no policy in place for securing *domestic* food consumption requirements. The truth is that a foreign corporation seeking to lease land in the Philippines to plant rice for South Korea, would not be prevented by a provision that states that lands used for food production should not be used for other purposes, as the destination of the produce (domestic or foreign markets) is not restricted.

Taking all these together, the picture becomes clear – a country that has, on paper, extended its agrarian reform programme and incorporated commendable reforms for its farmers, but nonetheless is undermining its own agrarian reform policy and achievements by giving up its lands to the highest bidder.

5 The policy shift towards “agro-imperialism”

Despite the enthusiasm for attracting foreign investment in agri-business in the Philippines among government circles and the landed elite, the rate of new investment so far has been measured. Perhaps the only reason why the phenomenon of “agro-imperialism” in the Philippines has raced ahead is because of the restrictions in Philippine law on foreign ownership of land.

For example, Section 2, Article XII of the Philippine Constitution reads in part:

“[A]ll lands of the public domain... and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.”

On the other hand, Section 3, Article XII of states:

“Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses which they may be devoted. Alienable lands of the public domain shall be limited to agricultural lands. Private corporations or associations may not hold such alienable lands of the public domain except by lease, for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and not to exceed one thousand hectares in area. Citizens of the Philippines may lease not more than five hundred hectares, or acquire not more than twelve hectares thereof by purchase, homestead, or grant.”

Read together, it cannot be gainsaid that public lands must remain under state control, and neither sold nor leased, that joint ventures can only be entered into by the state with majority Philippine-owned companies, and that no corporation may lease more than 1000 hectares of public lands. These provisions are also articulated in ordinary legislation such as the Republic Act (RA) 7900, or *An Act to Promote the Production, Processing, Marketing and Distribution of High-Valued Crops, Providing Funds Therefore, and for other*

Purposes, which allows farmer-cooperatives to lease out up to 1000 hectares of their lands for a period of 25 years (Section 6). And yet, moves persist to amend the Charter in order to remove these barriers to foreign ownership of land.

Fidel Ramos was the first among the Presidents in the post-dictatorship era to begin the marked paradigm shift towards liberalization and earn the dubious honour of turning the country down the path of foreign encroachment. According to Walden Bello, "A veritable neoliberal revolution that transformed our bureaucratic, political, and economic elites into a pro-foreign capital, pro-globalization lobby took place under Ramos. In fact, the Philippines has become over-liberalised, and the balance has definitely shifted to favour foreign investors over local investors" (Bello, 1999).

Joseph Estrada, his successor, while initially lambasting Ramos' neo-liberal policies and mouthing slogans for the masses, followed the same track. But in his case, he made no bones about his wishes to amend the Constitution – particularly the provision on foreign ownership of land. He named his project the Constitutional Correction for Development (CONCORD). The project was eventually shelved and his term was unceremoniously cut short in 2001 during the second EDSA People Power Revolution.

When Mrs. Macapagal Arroyo took over, she pursued a policy agenda that echoed her predecessors' push towards deregulation and privatization, both of which are the key prescriptions of the GATT-WTO regime. Her pronouncements on land use and agrarian reform worried agrarian reform advocates, as it shifted the burden of capitalisation for land productivity services from the State to the volatile and fickle markets. In her State of the Nation Address in 2004, she said:

"Land reform covers agrarian land, urban land, and ancestral domain land. I ask congress to qualify farmland as bank collateral and reform the system of urban land title... The creation of six million jobs in six years via more opportunities given the entrepreneurs, tripling of the amount of loans for lending to small and medium enterprises and the development of one to two million hectares of land for agricultural business" (Macapagal Arroyo, 2004).

At present, there are renewed moves to amend the Constitution in order to allow foreign ownership of land, often called the "safe reason" to change the Charter – as opposed to the allegedly more sinister covert agenda of extending the term limits of the President. For peasant advocates, however, the lifting of the restrictive provisions on land ownership is, in itself, dangerous enough as it would run counter to the principles of agrarian reform and threaten the tenure security of farmers.

The political implications of amending the Charter given the present volatile context may mean that the Constitution stays as is for a while, but on the aspect of land and land ownership restrictions, the government seems to have done everything it can but actually lift the restrictions.

In 2008, Joint Administrative Order (JAO) No. 2008-1, Series of 2008 – or the Guidelines Governing the Biofuel Feedstocks Production and Biofuels and Biofuel Blends Production, Distribution and Sale under RA 9367, was enacted by the Departments of Energy, Agrarian Reform (DAR), Agriculture, Environment and Natural Resources, Finance, Labour and Employment, Science and Technology, Trade and Industry, Transportation and Communication, the National Commission on Indigenous Peoples, the Philippine Coconut Authority, the Sugar Regulatory Administration and the National Biofuels Board. In a position paper written jointly by CARET, Inc. and RIGHTS Network, their main objection to this move as agrarian reform organisations was articulated thus:

“Not content with expanding the scope of coverage of lands that may be converted, JAO 2008-1 exempts from DA certification landowners whose “effective area is twenty five (25) hectares or less.” This means that all landowners with 25 hectares or less can arbitrarily and unilaterally decide to convert his landholding to a biofuel production site. The DAR estimates that 1.3 million hectares of land are undistributed. If these hectares of lands are made up of landholdings bigger than the retention limit of five hectares but less than 25 hectares, then they may immediately be converted into biofuel sites, no questions asked and no certification process required” (CARET and Rights Network, 2009: 2).

Seeing as the Joint Administrative Order makes no mention at all of the possibility of tenants occupying the landholding and cultivating it, how then can it be ensured that their tenure security is guaranteed and their rights are protected in the event of an agri-business arrangement between the landowner and a foreign corporation? Given the targets of the government and the gung-ho attitude towards agri-business, and given further the manner with which agrarian reform has been flouted and disregarded through the years, with no or scant provisions in the law securing the rights of tenants, we virtually offer up our farmers as sacrificial lambs in the quest towards investment generation.

6 Conclusion and recommendations

The immediate course of action in response to concerns described above, is the passage of a law or the enactment of clear-cut directives with two main stipulations. Firstly, it must be ensured that all investments involving the lease of agricultural lands to foreign investors pass through a national regulatory mechanism and are recorded in a national register that shall be open to the public. This should be done alongside the implementation of the provision in RA 9700 stating that a comprehensive inventory system identifying and classifying farm lands in the Philippines must be instituted by the Department of Agrarian Reform within one year from the enactment of the agrarian reform extension with reforms law. It is necessary to do this because the issue of food sufficiency requires a national inventory of lease arrangements vis a vis a similar inventory of available lands. At present, local governments negotiate land leases left and right with minimum intervention or regulation from the national government. Moreover, the public is often kept in the dark on these investments and only hear about them through media releases boasting about the benefits of these deals. Absent critical scrutiny and negotiations can be carried out with impunity, and it will not be very far in the future when the land area to meet domestic food requirements shall be insufficient.

Secondly, it is imperative that there be minimum standards established to protect the rights of farmers and farm workers who either enter into transactions with foreign corporations in their own capacity or are occupants in land holdings leased to foreign corporations. In as much as under current DAR directives, leaseback agreements have to be approved by the Department, so too must lease arrangements with foreign corporations be burdened with similar if not heavier requirements. It must be carefully spelled out who bears the risk of the investment, who shoulders the production costs, and what remedies are available in case of breach. Laissez-faire type agreements, when the playing field is not equal, more often than not result in the more vulnerable party getting short-changed. With no uniform rules and operational guidelines, tenure security is compromised.

Beyond the enactment of a new law or guidelines, it is of utmost necessity that the agrarian reform program be completed within the five-year period granted by the 2009 extension. If global land grabbing cannot be avoided, then farmers must at least hold a legitimate claim of ownership and can thus more freely negotiate as equal parties to the contract, and be in better legal standing to sue for breach.

But most importantly, perhaps, is to recognize the shifting arena of struggle while retaining core assertions of access to land and justice. The dizzying pace with which these Agreements are concluded requires responses similarly sure-footed – cognizant

both of the finite nature of our resources, and the inequity in power dynamics of the Global North and the Global South, soundly grasping the global dimension of the problem, while at the same time rooting it in grassroots realities.

More specific policy recommendations for Philippines could be summarized as follows:

1. Enactment of a law or executive policy (see Annex 2 for details of proposed bill on regulatory mechanisms on foreign land/agribusiness investments) that would:
 - a. Establish a National Regulatory Board for Foreign Land Investments that would set mechanisms and regulations for all investments involving the lease of agricultural lands to foreign investors;
 - b. Set a mechanism for the inventory of such transactions and ventures;
 - c. Set mechanisms of transparency for such transactions;
 - d. Protect the rights of farmers affected by such investments in terms of their tenure rights, the setting of reasonable lease rental rates, the sharing of risks in ventures, the annual review of contracts/leases, the provision of social security for farmers employed, and so on; and
 - e. Establish a “user’s fee” on foreign investors leasing agricultural lands which would be used by the local government units (LGUs) for the development of local agricultural infrastructure, rural credit and livelihood improvement, and so on.
2. Implementation of the provision in RA 9700 stating that a comprehensive inventory system identifying and classifying farm lands in the Philippines must be instituted by the Department of Agrarian Reform within one year from the enactment of the agrarian reform extension with reforms law;
3. Full implementation of the agrarian reform program within the five-year period granted by the 2009 extension to allow agrarian reform beneficiaries gain legitimate claims of ownership over the land so that they can thus more freely negotiate as equal parties to the contract, and be in better legal standing to sue for breach;
4. Increase farmer resilience to the temptation of leasing out their lands by strictly regulating agricultural importations and by increasing public investments in the agricultural sector; and
5. Develop and implement a national agricultural program for the attainment of national food security that is based on a strong and profitable domestic agriculture sector.

The above mentioned proposed bill entitled “An Act Regulating Large-Scale Acquisitions by Foreign Investors of Agricultural Lands,” has been drafted by Atty. Aison Garcia with inputs from AR Now!, and reflects the major findings of this study (see Annex 2).

Among the key findings of this study were the lack of a national regulatory institution that keeps track and regulates such acquisitions (including those directly negotiated with local government units, which are not inventoried) of agricultural lands. Hence the proposal for the creation of such a body.

The study also confirms that, unlike cases in Africa where large tracks of lands are being bought outright (thus the term “land grab” was used to refer to such cases), the case in the Philippines is really more of unregulated large-scale leasing of agricultural lands with terms of agreements between the small farmers/landowners usually biased in favour of the foreign investor. Hence, the proposal to set safety nets in terms of minimum lease rental rates, provision of social protection for farm workers hired, and so on.

The proposed bill does not reject outright foreign investments in agriculture, but recognises the potential contribution of foreign investments in the agricultural sector and to the whole Philippine economy as well. However, the usual approach of government has been to be over generous in providing incentives for foreign investors. The proposed alternative approach is to maximise the benefit gained from such foreign investments by charging such investors with a “land user’s fee” that will be allocated for agri-infrastructure development, agricultural credit delivery, and so on, in the municipality where the investment is being made.

Resistance from local government units is expected from the two proposals for the regulation of directly-negotiated investments and the “land user’s fee.” Thus, the challenge is how to convince the LGUs of the importance of ensuring that the nation’s stock of agricultural lands for food production and the nation’s food security is not compromised, and that the rights and welfare of their constituents have not been sacrificed.

Thus, the proposal is the passage of a law that regulates such land investments, as issues of food security and farmers welfare cannot be left to the mercy of the market. However, if opportunities arise for the executive adoption of the policies incorporated in the bill, then such windows shall be explored.

Finally, the said bill will still be subjected to further consultations and refinements with farmers groups and other stakeholders such as the LGUs. However, strong commitments have already be made by allies in Congress to file the bill once it is finalised.

Annex 1: Foreign investments in land in the Philippines

Table 2: List of agri-business related agreements under the RP-China Agreements

Nature of Agreement	Philippine Signatory	China Signatory
Memorandum of Understanding on Construction of Agriculture Technology Transfer Center and Grain Production and Processing Base in the Philippines (for hybrid corn, hybrid rice and sorghum farming) for the lease of 1,000,000 ha. of agricultural lands	Department of Agriculture (DA), Department of Agrarian Reform (DAR), Department of Environment and Natural Resources (DENR)	People's Government of Jilin, China Development Bank, Jilin Fuhua Agricultural Science and Technology Development, Co. Ltd.
Joint Development of Renewable Energy Project (40,000 ha. of land for sugarcane and cassava)	DA, DAR, DENR	Agricultural Department of the Guangxi Zhuang Autonomous Region (ADGZAR)
Agreement on the Provision of a 5,000 sq. m. space for Philippine Tropical Fruits in the Jiangnan Fruit and Vegetable Wholesale Market	DA	Guangzhou Jiangnen Fruit and Vegetable Wholesale Market Devt. Co. Ltd.
Joint Venture Agreement for the Manufacture of Bio-ethanol	B.M. SB Integrated Biofuels Company	Nanning Yongkai Industry Group
Joint Venture Agreement for the Manufacture of Bio-ethanol	Negros Southern Integrated Biofuels Company	Nanning Yongkai Industry Group
Joint Venture Agreement for the Establishment of a 150,000 liter per day capacity Bio-ethanol Plant	One Cagayan Resource Development Inc.	Nanning Yongkai Industry Group, China CAMC Engineering Co. Ltd.
Agreement for the Establishment of a 150,000 liter per day capacity Bio-ethanol Plant in Palawan	Palawan Bioenergy Development Corporation	China CAMC Engineering Co. Ltd.
Breeding and Culture of Grouper and other High Value Species	Philippine China Fisheries Consortium, Inc.	Xunshan Fishery Co. Ltd.
Establishment of a 36 Hectare Demonstration Farm for Sweet Corn	DA	Guangdong Academy of Agricultural Sciences
Joint Venture Agreement on Fisheries	Philippine Marine Technology Group	Shandong Gaolu Co. Ltd.

Nature of Agreement	Philippine Signatory	China Signatory
Breeding and Culture of Abalone, Sea Cucumbers, Sea Urchins and Scallops	Sun Warm Tuna Fishing Corp.	Guangdong Guangyan Fishery Group Co. Ltd.
Candaba Water Resource Project	Metropolitan Waterworks and Sewerage System	China CAMC Engineering Co. Ltd.
Agreement on Cooperation by and between Guangdong Fishery Administration and Bureau of Fisheries and Aquatic Resources	Bureau of Fisheries and Aquatic Resources (BFAR)	Guangdong Ocean and Fishery Administration
Supply MOA with Zongbao Fiber Ltd.	DA	Zongbao Fiber Ltd.
Provision of Small Mobile Ice Plant and Transport Facilities to Municipal Fishery Cooperatives and Associations	DA	China CAMC Engineering Co., Ltd.
Construction of Shipyard, Establishment of a Cold Storage facility and Upgrading/Rehabilitation of Certain Facilities at the Navotas Fishport Complex	DA	China CAMC Engineering Co. Ltd.
Expanding and Deepening Agriculture and Fisheries Cooperation	DA	Ministry of Agriculture
Agreement between the Department of Agriculture of the Republic of the Philippines and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China in the field of Sanitary and Phytosanitary Measures	DA	General Administration of Quality Supervision, Inspection and Quarantine

Source: Philippine Agricultural Development and Commercial Corporation

Table 3: List of Sample Agri-Business Agreements with Other Countries

Company or State	Commodity	Land area concerned (hectares)	Coverage of Investment	Preferred Business Ownership	Remarks
San Miguel, Kuok Food Security	Rice, corn, cassava, oil palm, feedstock, dairy	1,000,000	Development of green areas into food production areas along with the establishment of logistics, post-harvest and processing facilities for the raw crop produce.	Supply and purchase agreement, corporate farming, lease and co-management	MOU was signed last July 2008.
Qatar	Rice	100,000	Development of new areas for food production with the establishment of the necessary postharvest facilities, logistics support and primary processing plants.	Joint Venture, Lease and Corporate Farming	Presented opportunities to Qatar Investment Authority last December 2008 during the Presidential State Visit.
Saudi Arabia	Rice, corn, sorghum, barley, alfalfa, meat	Rice – 100,000 Corn – 100,000	Development of new areas for rice and corn production with the establishment of the necessary postharvest facilities, logistics support and primary processing plants.	Joint Venture	Signed an agreement with AOICA to grant the feasibility study during the Presidential Visit last May 20, 2009 in Seoul, Korea
Brunei	Rice	10,000	Development of green areas into food production areas along with the establishment of logistics, postharvest and processing facilities for the new crop produce	Corporate farming, lease and co-management	Minister of Brunei went to the Philippines last April 2008 to conduct ocular inspection for rice agro-estate investment
Oman	Rice	10,000	Development of new areas for food production with the establishment of the necessary post harvest facilities, logistics support and primary processing plants	Joint Venture and Lease	Presented opportunities to Oman Ministry of Agriculture
Kuwait	Rice Corn	Rice – 10,000 Corn – 10,000	Development of new areas for food production with the establishment of the necessary postharvest facilities	Joint venture and corporate farming	Presented opportunities to the Kuwait Ministry of Agriculture
New Zealand	Livestock	500	Development of new areas for livestock breeding and dairy farming	Joint venture and lease	

Source: Philippine Agricultural Development and Commercial Corporation

Annex 2

FIFTEENTH CONGRESS OF THE REPUBLIC OF THE PHILIPPINES

AN ACT

REGULATING LARGE-SCALE ACQUISITIONS BY FOREIGN INVESTORS OF AGRICULTURAL LANDS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

Section 1. Short Title. – This Act is known as the “*Foreign Acquisition of Agricultural Lands Regulatory Act*”.

Section 2. Declaration of Policy. – It is hereby declared the policy of the State to promote the general welfare of the public, and protect them from any risk or negative impacts brought about by negotiations and investment deals which involve large-scale transnational acquisitions and leases of agricultural lands. It is also the policy of the State to adopt and implement sufficient measures that shall guarantee the rights of the Filipino population especially the basic sectors to preferential use of the land resources and ensure that there is enough agricultural lands for the present and future domestic needs without compromising and encroaching to ancestral domain lands, lands for socialized housing, lands for environmental integrity, watersheds, fisherfolk settlement and other social use of the land.

The State shall prioritize food security of the country through sustainable utilization and protection of prime agricultural lands for food production. The State shall uphold the sovereignty of the nation and protect the national interest, national food security, cultural integrity, healthy environment and the right to self-determination in any investment agreement entered between the Philippine entity and a foreign entity involving the use of agricultural land in the Philippines.

Congress shall give the highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good. To this end, the State shall regulate the acquisition, ownership, use, and disposition of property and its increments. The right of the people and their organizations to effective and reasonable participation at all levels of social, political, and economic decision-making shall not be abridged. The State shall facilitate the establishment of adequate consultation mechanisms.

SEC. 3. Objectives. – This Act aims to:

- a) to ensure that foreign investments on agricultural lands will benefit Filipinos especially the most vulnerable sectors in the country;
- b) to guarantee that any negotiations and agreements entered into by any Filipino entity with foreign entities are transparent and beneficial to the Philippines and local communities;
- c) to ensure that any agreements will not result in food insecurity, degradation of the environment, create illegitimate foreign debt or violation of any human rights, social justice legislations and administrative issuances;
- d) take into account the rights of small farmers as well as the rights of workers employed on the farms;
- e) to ensure the right to self-determination and the right to development of Filipinos;
- f) to protect the environment from any hazard that can possibly be brought by such foreign agreements; and
- g) to preserve and promote indigenous culture, practice and knowledge in agriculture.

Section 4. Definition of Terms. –

Agricultural Lands refers to private and public lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of trees, raising of livestock, poultry, fish or aquiculture production, including the harvesting of such farm products, and other farm activities and practices performed in conjunction with such farming operations by persons whether natural or juridical.

Agricultural Land Use Conversion refers to the process of changing the use of agricultural land to non-agricultural uses.

Agricultural Sector is the sector engaged in the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry, or fish, including the harvesting and marketing off such farm products, and other farm activities and practices.

Basic Sectors refers but not limited to farmers, fishers, indigenous peoples, informal settlers, forest dwellers or formal and informal labor (i.e. farmworkers).

Biopiracy refers to the claim of ownership or take unfair advantage by foreign entities of the indigenous genetic resources and traditional knowledge and technologies of the Philippines.

Conflicting Claim is a dispute over a piece of land by various groups claiming some right to own or possess the land.

Filipino Entity refers to the Philippine National government or local government units or Philippine registered private associations.

Foreign Entity refers to a Foreign Government or instrumentality or Foreign Corporation or business associations (i.e. joint venture) with non-Filipinos owners. A corporation is considered a foreign entity if more than 50% of its shares of stocks at any time is owned by non-Filipinos.

Food Security refers to the policy objective, plan and strategy of meeting the food requirements of the present and future generations of Filipinos in substantial quantity, ensuring the availability and affordability of food to all, either through local production or importation, of both, based on the country's existing and potential resource endowment

and related production advantages, and consistent with the overall national development objectives and policies. However, sufficiency in rice and white corn should be pursued.

Labor Malpractice refers to the labor practices of management which is below the standards set by the International Labor Organization (ILO), the Philippine Labor Code or the Department of Labor and Employment issuances. It may also include the unfavorable environment in the workplace for organizing unions or workers' association.

Land Speculation is the practice of acquiring land at a lower price in anticipation for an increase in the market price because of some development like but not limited to building a road or reclassification by the LGU of the land into commercial or industrial zone, etc.

Large-scale Foreign Acquisition of Agricultural Lands refers to the following:

- a) the leasing, acquisition or use of agricultural land area exceeding 5 hectares in the Philippines by foreign entities; or
- b) entering into a joint venture agreement, partnership, cooperation or similar business arrangements where the control or the beneficial use of an agricultural land with land area exceeding 5 hectares is given to the foreign party;

National Land Use Plan refers to the national government's plan for the rational, holistic, and just allocation, utilization, management, and development of the country's land resources to ensure their optimum use consistent with the principle of sustainable development.

Section 5. Regulation of all Foreign Investments on Agricultural Lands exceeding 5 hectares. All contracts, agreements, negotiations, talks and deals involving foreign investment on agricultural land exceeding 5 hectares shall be publicly disclosed. It shall be approved by the National Regulatory Board on Foreign Land Investments before it is legally implemented. The regulation covers all investment deals on agricultural land between:

1. Philippine Registered Private Entity with a Foreign Entity; or
2. Philippine Registered Private Entity with a Foreign National or Local Government or its instrumentality; or
3. Philippine National Government or instrumentality with a Foreign Entity; or
4. Philippine National Government or instrumentality with a Foreign National or Local Government or its instrumentality; or
5. Philippine Local Government unit or its instrumentality with a foreign Entity; or
6. Philippine Local Government unit or its instrumentality with a Foreign National or Local Government or its instrumentality.

Notwithstanding the provisions in the Local Government Code, local government units are hereby required to seek the approval of the Board for agreements involving Large Scale Foreign Acquisition of Agricultural Lands.

Section 6: Creation of a National Regulatory Board on Foreign Land Investments .

There shall be a National Regulatory Board on Foreign Land Investments (hereinafter known as the "**Board**") which is directly under the Office of the President and has the power to approve or disapprove Foreign Investment agreements on Agricultural Land based on the guidelines it will formulate. The Board shall be composed of a chairperson who will be appointed by the President for a term of 3 years among the nominees submitted by the National Anti-Poverty Commission (NAPC). The members of the Board are the:

1. NEDA Director General;
2. Director of Board on Investments;
3. NAPC Chairperson;
4. Chairperson of the NCIP;
5. Chairperson of the Philippine Commission on Women;
6. Chairperson of the Commission on Human Rights;
7. Land rights advocacy NGO representative;
8. Secretary of the Department of Agriculture;
9. Secretary of the Department of Environment and Natural Resources; and
10. Secretary of the Department of Agrarian Reform.

Except with the NGO representatives who will serve for a term of three (3) years, the other Board members shall have concurrent term with their position. The Board shall have the power to create its own secretariat, formulate its own organizational plan, staffing pattern and internal rules.

Section 7. General Principles for Approval of Foreign Investments on Agricultural Lands. – The guidelines to be formulated by the Board shall include and strengthen the following essential principles. No investment will be approved if the following conditions are not complied:

- a. Impact assessment shall be conducted at the start of the investment talks and prior to the finalization of agreement and at pre-defined intervals from the finalization to implementation of the agreement, in order to assess the consequences of the investment on food security, local employment and incomes; on access to productive resources by the local communities especially the basic sectors and the effect on the environment. Potential impacts to be studied and taken into account for the approval or disapproval of the investment agreement include:
 - a) the eviction or displacement of land users with or without formal security of tenure over the land they have been cultivating;
 - b) the loss of access to land for indigenous peoples and informal forest dwellers;
 - c) competition for the use of natural resources like water;
 - d) decreased food security if local populations are deprived of access to productive resources;
 - e) conversion of agricultural land;
 - f) depletion of soil quality;
 - g) loss of critical biodiversity;
 - h) increase in greenhouse gas emissions;
 - i) destruction of watersheds and water resources;

- j) diminution of cultural or historical significance of the land; and
 - k) any similar aspect which the Board may include.
- b. All Investment agreements must be written in English and Tagalog with translations to the local dialect of the area where the land is located.
- c. All Investment agreements shall include provisions on:
 - a) Providing that a certain minimum percentage of the crops produced shall be sold to the local markets, with specific conditions set if prices of food commodities on international markets reach certain levels and if there is an acute domestic shortage of the crops produced, all the harvest shall be sold in the local market at prevailing market price;
 - b) Non-displacement of any person from the land because of the project unless favorable relocation and livelihood shall be provided by the investor prior to the start of the project.
 - c) Application of Philippine laws and regulations especially but not limited to CARL, IPRA, Fisheries Code, Labor Code, UDHA, AFMA, Clean Air Act, Solid Waste Management Act, NIPAS Act shall be incorporated in the investment agreement and provide effective remedies for violations.
 - d) Respect, promote and protect human rights and related international standards of the affected sectors and provide effective remedies of violations.
 - e) Adoption of Sustainable Agriculture as the farming practice.
 - f) Utilization of local labor.
 - g) Waiver of confidentiality. The written agreement can be accessed by the public at any reasonable time.
- d. Negotiations leading to investment agreements shall be conducted in full transparency and with the participation of the affected local stakeholders whose may be affected as a result of the investment. Before any deal is approved, the free, prior and informed consent shall be given by the local communities concerned.
- e. Mandatory publication of the investment deal. At the inception of the investment by the foreign party, its intention to invest shall be published in 2 newspapers of national circulation where the public is given the opportunity to scrutinize and opposed the intention to invest. If there is no opposition, the foreign investor shall proceed with the negotiation and finalization of the agreement. The agreement (i.e. contract) shall be submitted for approval to the Board. The agreement will be published in 2 newspapers of national circulation. The public is given the opportunity to scrutinize and opposed the contract. If there is no opposition, the agreement shall be approved by the Board and the foreign investor shall proceed with the project.
- f. The workers for the project must be afforded living wages and social protection like but not limited to health insurance and membership in the Social Security System which is a key component of the human rights.
- g. Particular to agro-ecological approaches and low external input farming practices, sustainable agriculture shall be included in the contract agreements, recognizing that a safe and productive environment is indeed an element in the realization of the right to food and sustainable development of local communities.
- h. "User's fee" will be charged for the utilization of land by the foreign party, will be determined and collected by the Municipality/ City where the project is located. It

will be used for alternative off-farm livelihood projects/enterprises, agriculture infrastructures and funds for credit to small farmers and farmworkers.

- i. The Investment agreement shall be subject to a yearly reviewed by the Board and any violation may be a ground for its revocation.

Section 8. Minimum Lease Rental of Agricultural Lands by Foreign Entities. In the negotiation of the annual lease rental per hectare, the parties shall factor in the annual land amortization value per hectare for agrarian reform lands, the annual Real Property Tax on the land per hectare and the annual poverty threshold in the area, and the gross income of company operating on the land based on audited financial statements. The minimum lease rental shall be computed based on the formula set by the Board considering the above factors. The computed lease rental approved by the Board shall be incorporated in the terms and conditions of the lease agreement. All the pertinent data and documents used in the determination of the lease rental shall be submitted to the Board and made public by it. Renegotiation of the amount of lease rentals shall be undertaken every five (5) years or earlier if any of the following arise: Extra-ordinary inflation, drastic price fluctuation on both production input and output, declaration of the areas as calamity or disaster area due to force majeure and other similar grounds.

Section 9. Maximum Area of Agricultural Land Open for Lease to Foreign Entities. At most 30% of the total classified agricultural lands in the Philippines shall be open for lease to Foreign entities. The Board shall undertake an inventory of all agricultural lands in the Philippines within six (6) months from the approval of this Act.

Section 10. Implementing Rules and Regulations. – The Board is hereby mandated to formulate rules and regulations for the implementation of this Act within sixty (60) days from effectivity hereof.

Section 11. Congressional Oversight Committee. A congressional oversight committee on Foreign Investment on Agricultural Land shall be created to monitor the performance of the Board and to propose legislation legislative action in relation to agricultural land grabbing. The oversight committee shall be composed of 2 members of the House of Representatives and 2 Senators. They elect among themselves their chairperson who shall preside their meetings.

Section 12. Appropriation for the Board. The Board shall have a yearly appropriation from the General Appropriations Fund of Fifty million pesos (Php50,000,000) for its operations. It can request for additional appropriation when necessary. The Congressional Oversight Committee shall be allocated a yearly budget for its operations of one million pesos (Php 1,000,000) to be sourced from the General Appropriations Fund.

Section 13. Prohibitive Acts and Penalties. –Agricultural Land Grabbing is defined as Large-scale Foreign Acquisition of Agricultural Lands which benefits the foreign party or disadvantageous to the Philippine entity; or that results to the displacement of basic sectors, food insecurity, soil degradation, agricultural land conversion, bio-piracy, land speculation, labor malpractice and conflicting claim.

Agricultural Land Grabbing shall be prohibited and is punishable with a penalty of fine of One Million dollars (\$1,000,000) and confiscation of the assets of the foreign entity. The subject land shall be escheated to the government and will be distributed to qualified agrarian reform beneficiaries.

Any person or entity who violates, attempts to violate, or conspires to violate, any provision of this Act aside from Agricultural Land Grabbing shall be punishable with a penalty of imprisonment for a period of not exceeding six (6) months or a fine of not less

than Fifty Thousand Pesos (P50,000.0) but not more than One Hundred Thousand Pesos (P100,000.00), or both, at the discretion of the court. If the violator is a Corporation, the sitting members of the Board of Directors during the violation shall be held liable and in addition to the penalty, the foreign entity shall be black listed from doing business in the Philippines.

Section 14. *Separability Clause.* – If any provision of this Act shall at any time be found to be unconstitutional or invalid, the remainder thereof not affected by such declaration shall remain in full force and effect.

Section 15. *Repealing Clause.* – All laws, decrees, rules or regulations inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 16. *Effectivity Clause.* – This Act shall take effect after fifteen (15) days following its complete publication in two (2) newspapers of general circulation.

Approved,

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This report is part of a wider initiative on Commercial Pressures on Land (CPL). If you would like further information on the initiative and on the collaborating partners, please feel free to contact the International Land Coalition.

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