Agribusiness Venture Arrangements (AVAs) as a Collateral Substitute

A Case Study of ARB Cooperatives' Farm Rehabilitation Loan in Compostela, Valley

INTRODUCTION

Many studies (Llanto and Orbeta, 1999; Llanto, 2004; 2005) argued that heavy government interventions, such as loan quota, subsidized interest rates and directed credit programs, failed to promote efficient rural financial markets. Hence, these studies suggested the need for market-oriented credit approach to increase the flow of credit in the rural areas (Llanto and Orbeta, 1999; Llanto, 2004; 2005). Unfortunately, in the Philippines' case, farmers' access to formal credit remained problematic despite the paradigm shift to a market-oriented credit policy in 1980s. One major reason was that the government continued to implement subsidized credit programs because of the pressure coming from the different interest groups. Such decision undermined the government's own market-oriented credit and financial policy reform efforts (Llanto, 2005).

In the present time, the rural finance in the Philippines is still problematic. One major barrier to smallholder finance is the lack of traditional collateral such as real estate mortgages. This concern is brought by the passage of Comprehensive Agrarian Reform Program (CARP), established in 1988 through Republic Act (RA) 6657 and later expanded in 2009 through RA 9700. Llanto (2005) purported that the prohibition on mortgaging CARP lands has weakened its value as collateral from the perspective of banks. This is because CARP-distributed lands cannot be transferred (through sale, lease, or other means) until it is fully paid and the title is fully vested in the agrarian reform beneficiaries (ARBs).

In this case, studies such as Nagarajan and Meyer (1995) and Llanto (2004; 2005) suggested the importance of collateral substitutes to extend loans to small farmers in the absence of traditional collateral (e.g. real estate mortgages) demanded by banks. It should be noted that there is no official definition regarding collateral substitutes used by financial institutions in developing countries (Nagarajan and Meyer, 1995). Nevertheless, some scholars (e.g. Balkenhol and Schütte, Binswanger, et al. (1986) as cited in Feder, Ochan and Raparia, 1988; Binswanger, et al. (1986) as cited in Nagarajan and Meyer, 1995) provided definitions on collateral substitute. In fact, Binswanger et al. (1986) gave a comprehensive definition of collateral substitute (as cited in Nagarajan and Meyer, 1995). The table below shows the different examples of collateral substitute.

Table1.Examples of Collateral Substitute

Term	Definition	Examples
Collateral substitute	Describe a form of securing a loan that is to cover a shortfall in "solid" collateral (Balkenhol and Schütte, n.d., 15)	Personal guarantee; life insurance
	Alternative arrangement (Binswanger, et al., 1985 as cited in Feder, Ochan, Raparia, 1988)	Third party guarantee
	Non-physical assets with or without a market value, or physical assets that have qualities other than collateral to enforce loan repayments (Binswanger, et al., 1986, p.4 as cited in Nagarajan and Meyer, 1995)	Interlinked contracts, third party guarantees, moral persuasion, threat of loss of future borrowing opportunities, reputation, long-term relationships (familial and/or business), group liability, guarantee funds, savings, insurance policies, inventories and accounts receivables (Binswanger, et al., 1986, p.4 as cited in Nagarajan and Meyer, 1995) Interest rates and penalty conditions (Adams, 1994, p. 4, as cited in Nagarajan and Meyer, 1995) interlinked contracts (Nagarajan and Meyer, 1995)

Author's illustration based on Balkenhol and Schütte (n.d.), Feder, Ochan and Raparia (1988) and Nagarajan and Meyer (1995)

This paper adopted Binswanger, et al. (1986) definition of collateral substitute. One of the examples of collateral substitute is interlinked contracts. In this case, the agribusiness venture arrangements (AVAs) of some agrarian reform beneficiary organizations (ARBOs) are used as an interlinked contract for farm rehabilitation loans in 2012. The AVAs[5] of DFBGARC, SELECTA and PAWARBCO are used as one of the pre-release conditions of their loans.

According to the Land Bank's letter of approval regarding the loan application of SELECTA, the letter enumerated the pre-release conditions of the loan worth Php 10,926,000.00. These were:

1. Favorable Credit Investigation/Background Investigation (CI/BI) of Individual Banana Grower/ Borrower;
2. Submission of signed Tripartite Agreement among Banana grower/ borrower;
3. Submission of Production and Marketing Contract between the Grower and Sumifru;
4. Submission of Lease contract, if farm is under lease agreement, which should have of not less than ten (10) years;
5. Opening of Non-Withdrawal Deposit Account (NWDDA) with an LBP branch;
6. Submission of Individual Request for Availment duty signed by the individual Banana Grower/ Borrower and Sumifru;
7. For those who have existing loan accounts with either rural banks or commercial banks and will avail directly of the rehabilitation loan with LBP, submission of a certification from the bank concerned that the account was already restructured and of current status.

Given this, it is important to understand the implications of using AVAs as a collateral substitute specifically for ARBOs in Compostela Valley Province.

1 DFBGARC and SELECTA are the only ones that allowed IDEALS to have a copy of their AVAs.

DATA PRESENTATION AND ANALYSIS:
Case studies on DFBGARC, DFC PAWARBCO and SELECTA's farm rehabilitation loans

Typhoon Pablo devastated most banana plantations in the province of Compostela Valley in 2012. In response to this, LBP offered financial assistance to all farmers and ARBOs to rehabilitate their farms. LBP launched two loan programs: 1) the Rehabilitation Program for Cavendish Banana Production and Crop Production Loan under Agriculture Production Credit Program (APCP) (D.V. Angas, personal communication, July 2, 2019). Dennis Vonn Angas, an Account Officer of LBP-Davao Del Norte Lending Center, explained that the former is designed for individual farmers and the latter is intended to cater ARBOs (personal communication, July 2, 2019).

Kennedy Garabiag, Economist V-Division Chief of ACPC, further explained that APCP is a credit facility designed to meet the financing needs of ARBOs and their member-ARBs. The program was initially implemented by LBP, Department of Agriculture (DA) and Department of Agrarian Reform (DAR). Eventually, the program incorporated the Department of Environment and Natural Resources (DENR) and ACPC. DAR and DENR are responsible for the identification of the beneficiaries of the program. DAR is assigned to identify the qualified lowland ARBs and their ARBOs, while DENR is in-charge of determining the qualified upland ARBs and their People's Organizations (POs) (K. Garabiag, personal communication, June 28, 2019).

Majority of the banana plantations affected by the typhoon are owned by the farmers with Sumifru as buyer/investor [3]. Sumifru and LBP then collaborated to orient small

[2] DFBGARC and SELECTA are the only ones that allowed IDEALS to have a copy of their contracts.

[3] This designation is based on the Tripartite Memorandum of Agreement of DFBGARC, DFC PAWARBCO and SELECTA with LBP and Sumifru.

[4] Garabiag explained that there are basic criteria for eligibility of ARBOs under APCP. These are 1) legal personality (Cooperative Development Authority (CDA), Securities and Exchange Commission (SEC), or Department of Labor and Employment (DOLE)/BRW registered); 2) operational for at least 6 months; 3) majority of members are ARB and/or ARB household members; 4) Systems and procedures in place particularly on lending and 5) presence of Core Management Team (COMAT) (personal communication, June 28, 2019)

farmers and ARBOs about the different loan programs for farm rehabilitation in 2012 (D.V. Angas, personal communication, July 2, 2019). DFC PAWARBCO pointed out that Sumifru and LBP organized an event to discuss the LBP loan programs. All Sumifru growers, including DFBGARC, DFC PAWARBCO and SELECTA, attended this event (personal communication, July 4, 2019). The three ARBOs were among those that applied for a farm rehabilitation loan. Since DFC PAWARBCO and SELECTA still had concerns regarding their status as a cooperative[4] during this time, they could not apply for APCP.

Hence, Mary Jane Ceñal and Rodrigo Bongawan, in behalf of DFC PAWARBCO and SELECTA, respectively, applied for the Rehabilitation Program for Cavendish Banana Production. Both Ceñal and Bongawan got special power of attorney (SPA) from their members. They qualified under the program in 2013. On the other hand, DFBGARC qualified under APCP in 2014. Under the Rehabilitation Program for Cavendish Banana Production, DFC PAWARBCO and SELECTA enjoy a lower interest rate of 6 percent per annum (p.a.) as compared to the 9.5 percent p.a. that DFBGARC has to pay under the APCP (D.V. Angas, personal communication, July 2, 2019). It should be noted that DFBGARC chose APCP because of the belief that there is no takeover provision in this program (personal communication, July 3, 2019).
This explains why the interest rate of DFBGARC, DFC PAWARBCO and SELECTA varies. The individual borrowers of the Rehabilitation Program for Cavendish Banana Production are given 6 percent interest rate p.a. while the ARBOs under APCP are given 8.5 percent interest rate p.a. for short term and 9.5 percent interest rate p.a. for long term loans (D.V. Angas, personal communication, July 2, 2019).

Garabiag justified the interest on LBP loan programs that the directed credit programs (with interest subsidy on loans) implemented before by the government did not work well because they encouraged dole-out mentality among the borrowers. Charging annual interest rate with the ARBOs such as the Rehabilitation Program for Cavendish Banana Production and APCP is necessary to generate income and reflows and thus sustaining the program in the long run. Additionally, the interest rate under the program is still relatively smaller than the rates provided by commercial banks (K. Garabiag, personal communication, June 28, 2019). The table below illustrates the credit information of DFBGARC, DFC PAWARBCO and SELECTA on farm rehabilitation loan.

Table 1: Credit Information of DFBGARC, DFC PAWARBCO and SELECTA on Farm Rehabilitation Loan

ARBOs	Loan Program	Total Amount of Loan (PHP)	Interest Rate (%)	Total Amount of Outstanding Loan Balance as of July 2019 (Php)
DFBGARC	APCP	7,518,000.00	9.5	2,687,128.84
DFC PAWARBCO	Rehabilitation Program for Cavendish Banana Plantation	11,637,000.00	6	Almost 6 million
SELECTA	Rehabilitation Program for Cavendish Banana Plantatio	10,926,000.00	6	More or less 4 million

Author's illustration based on interviews with DFBGARC, DFC PAWARBCO and SELECTA

Nevertheless, LBP required all of them to enter into a tripartite agreement with Sumifru[5] (D.V. Angas, personal communication, July 2, 2019). The agreement is tripartite because LBP necessitates the involvement of a corporate partner before approving the loan and releasing any funds to the farmers. Under the agreement, Sumifru as buyer/investor is obligated to assist the farmers in the rehabilitation of their farm. Sumifru is also obligated to endorse the farmers availing of the loan to LBP and help the bank collect payments and process any documents needed upon request of the bank (D.V. Angas, personal communication, July 2, 2019).

The tripartite agreement of these ARBOs with Sumifru and LBP extend the term of their unfair AVAs to facilitate the loan payment. IDEALS and Oxfam previously published policy briefs, case studies and other social media products focusing on the analysis of such contracts[6]. The most recent case study explained why the contracts are unfair, to wit:

"The contracts signed by banana farmers were executed without a prior and meaningful consultation, which is a violation of Philippine Contract Law[7] and the rules and regulations[8] that govern contracts between farmers and investors[9]. Moreover, the contract period signed by these farmers is typically between 15–30 years, with provisions for automatic renewal for another 15–30 years. These extremely lengthy contract periods provide little to no opportunity for adjustment nor amendment, despite changing conditions (IDEALS, 2017, p.62).

Under these contracts, all of the risks and costs of production are largely shouldered by the farmers (IDEALS, 2017, p.62)."

[5] Sumifru Philippines Inc. (hereafter, Sumifru), a domestic stock corporation operating primarily in Davao City, was incorporated under Philippine laws in November 21, 2003 as a fully-owned subsidiary of the Japanese firm, Sumifru Corporation. Under its original Articles of Incorporation, Sumifru Philippines was organized "to engage in the business of trading of goods such as agricultural chemicals, plastic pellets, corrugated papers, and other related products on wholesale basis." In February 2007, the company amended its Articles of Incorporation and expanded its corporate purpose to primarily consist of acting as a holding company for different enterprises and establishments, for which purpose it committed to invest in, purchase, and otherwise enter into various transactions involving real and personal property of every kind and description. As it presently stands, the corporation's corporate powers cover practically all possible transactions and businesses except those requiring secondary license from the SEC (IDEALS, 2017).

Since its incorporation, Sumifru has been primarily known for its fruit exporting business. The corporation presently exports Cavendish bananas to China, Japan, Korea, the Middle East, New Zealand and Russia. Sumifru entered into AVAS with various organized groups of farmers or banana growers in order to maintain its supply of bananas. Among the organized groups contracted by Sumifru for banana production are the five organizations mentioned earlier (IDEALS, 2017).

To give credit where due, SUMIFRU has taken on the risk of partial or total loss after the bananas have been delivered and accepted in the packing plants. Previously, the farmers retained ownership and therefore retained risk of loss for the bananas even after leaving their physical control which includes the risk of loss via rejection at a foreign port due to shipment mishandling. For a more detailed discussion on why these contracts are unfair please see the full case study entitled Good and Bad Practices in the Export-Driven Banana Industry in the Philippines which is part of the regional publication Business and Human Rights in the ASEAN: Procedures, Responsible Investments, and Making the Case for Women (IDEALS, 2017).

Otherwise stated, LBP required the ARBOs to extend the length of their AVA with Sumifru so that the termination date matches or exceeds the loan repayment term. After the tripartite agreement with Sumifru and LBP, the AVA contract period for DFBGARC, DFC PAWARBCO, and SELECTA was extended from 2008-2023 to 2014-2024. DFC PAWARBCO is the only one in favor regarding the extension of AVA (personal communication, July 4, 2019). Based on the interviews with DFBGARC and SELECTA, the farmers did not want to extend the validity of their AVAs, however due to the economic realities on the ground they were forced to do so because a valid and

subsisting AVA was a precondition to access the LBP rehabilitation loan. The farmers felt like it was their only option without which they and their families would starve. The proceeds from the loan were the only way for them to access capital to rehabilitate their farms and resume farm production.

At present, DFBGARC, SELECTA, DFC PAWARBCO have been asking Sumifru to increase the buying price of Cavendish banana from USD 4.25 to USD 6.00 per box. It is important to note that the buying price is fixed even if market prices change. The only way to change the buying price is if Sumifru decides to do so. This is crucial because the farmers only have production income to pay for their personal expenses and their farm rehabilitation loan with LBP.

[6] IDEALS. (2014). A Destiny of Debts: Unmasking the prejudicial contracts in the Banana Industry in the Philippines.
Oxfam. (2016). A Destiny of Debts: Unmasking the prejudicial contracts in the Banana Industry in the Philippines.
Oxfam in the Philippines. (2018). Land But No Freedom: Debt, poverty and human suffering in the Philippine banana trade.
Oxfam. (2018). Good and Bad Practices in the Export-Driven Banana Industry in the Philippines. In Business and Human Rights in the ASEAN: Procedures, Responsible Investments, and Making the Case for Women (pp. 61–93).

[7] New Civil Code (NCC). Art. 1318. There is no contract unless the following requisites concur: (1) consent of the contracting parties, (2) object certain which is the subject matter of the contract, and (3) cause of the obligation which is established. (1261).

NCC. Art. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. (n).
NCC. Art. 1330. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. (1265a).

[8] Department of Agrarian Reform (DAR). Administrative Order No. 9, Series of 2006, Section 4 General Principles, paragraph 4.7. The terms and conditions of the AVA contract shall be mutually agreed upon by the ARBs and the investor. The approval of the contracts by the PARC or the PARC ExCom shall be strictly guided by the conditions stipulated in Art. II of this Order.

The terms and conditions of the AVA contract shall be fully known to all parties. If warranted, the parties may translate the contract into the local dialect known to the ARBs. It shall be the responsibility of the concerned DAR field officials to ensure that the ARBs are made fully aware of and understand the options available to them, including their rights and obligations under the AVA contract.

[9] This lack of meaningful and informed consent will be further discussed and illustrated through the narration of the specific cases of the farmer organizations in the main body of the paper.

As a safeguard mechanism, LBP used the reserve fund in the event of farm rehabilitation loan default of DFBGARC, DFC PAWARBCO and SELECTA. Angas argued that this is one of the advantages of tripartite agreement because the reserve fund can be used as a source of savings for the farmers and ARBOs. Reserve fund is also used when expected cash flow of the individual farmer-borrower fell short to service loan amortization amount on a specific due date (D.V. Angas, personal communication, July 2, 2019). However, based on the interviews with DFBGARC, DFC PAWARBCO and SELECTA, they intend to use the reserve fund to pay for their respective loan balance for farm rehabilitation. The table below shows the tripartite agreements on reserve fund of these ARBOs and its current amount per organization.

Table 2: The Reserve funds of DFBGARC, DFC PAWARBCO and SELECTA

ARBOs	Tripartite Agreement (Reserve Fund)	Current Reserve Fund
DFBGARC	Php 5.00/box to start on the 2nd year from the date of the release of the loan as Reserve Fund provided annual production yield will exceed 3, 200 boxes per hectare	Php 1.4 million (as of April 2019)
DFC PAWARBCO	Php 5.00/box to start on the year as Reserve Fund provided annual production yield will exceed 3,200 boxes per hectare	Php 4 million (as of July 2019)
SELECTA	Php 5.00/box to start on the year as Reserve Fund provided annual production yield will exceed 3,200 boxes per hectare	Php 6 million (as of July 2019)

Author's illustration based on interviews with DFBGARC, DFC PAWARBCO and

Angas further purported that the tripartite agreement on financing with the bank and the corporate investor of the ARBOs is not exclusively done by LBP. This is also being practiced by other banks. The main purpose of this agreement is to avoid loan defaults which are a common issue among farmers (D.V. Angas, personal communication, July 2, 2019).

In our analysis LBP's interest is primarily to secure the repayment of loans obtained by these ARBOs. LBP has a more "transactional" relationship with Sumifru and farmers, meaning they do not interfere with internal arrangements between the company and its subsidiaries. In this case, it should be noted that LBP is not the same as the other commercial banks. Unlike them, LBP has a developmental mandate; that is, to serve the farmers and fisherfolk. The tripartite agreements of DFBGARC, DFC PAWARBCO and SELECTA with Sumifru and LBP have negative effects on the farmers due to its extension of the term of AVAs with problematic provisions (e.g. low buying price of Cavendish banana). The tripartite agreements of these ARBOs are connected to their AVAs with Sumifru because their AVAs serve as a pre-requisite and collateral for the ARBOs to obtain farm rehabilitation loans from LBP.

On the other hand, one DAR official commented that when these ARBOs obtained a farm rehabilitation loan from LBP, they did not intervene because it was an agreement with Sumifru, LBP and the ARBOs. Hence, these ARBOs did not receive any legal support from DAR or any private individual when they entered the tripartite agreement with LBP and Sumifru (personal communication, March 29, 2019). From this, one can infer that the extent of help that DAR and LBP can provide to ARBs is limited by their mandates.

AVA as a Collateral Substitute for Farm Rehabilitation Loans

Many studies (Nagarajan and Meyer, 1995; Llanto and Orbeta, 1999; Llanto, 2004; Llanto, 2005) discussed the importance of collateral substitutes to extend loans to small farmers in the absence of traditional collateral (e.g. real estate mortgages) demanded by banks. Examples of collateral substitutes include joint liability, or having a guarantor to back up the loan, mutual guarantee by group members and interlinked contracts (Casuga and Hernandez, 1996 as cited in Llanto, 2005). In this way, these collateral substitutes can protect financial institutions against loan default losses.

However, the AVAs of DFBGARC, DFC PAWARBCO and SELECTA are already problematic in themselves. First, Sumifru is designated as the exclusive provider of production inputs and technical support. Fundamentally, the problem with this set-up is that, Sumifru does not have any obligation to undergo a bidding process or to canvass for the lowest possible supplier because it does not have a direct economic interest in keeping the costs down. As exclusive provider and supplier of these inputs Sumifru charges the costs to the account of the farmers. Sumifru can then further profit from the arrangement as there is neither bidding nor mechanism to ensure transparency in the process. In effect, they may find themselves burdened with exorbitant costs from overly-expensive inputs (IDEALS 2017).

Second, the inclusion of a "takeover clause" in the EPSA authorizes Sumifru to intervene and take over the management and operations of the farm. This often also comes with a physical takeover or a dispossession of the land. A takeover in itself is valid if it is for management purposes and with proper safeguards. However, due to the vague justifying conditions for takeover and indeterminate period of validity the deprivation of beneficial ownership and physical possession of the land that is tantamount to land grabbing. In the 2017 case study we analyzed the takeover clause, as follows:

"Under the EPSA 2014, the takeover clause can be invoked upon the specified grounds[10] and with prior notice to the grower seventy-two (72) hours before actual takeover.

The duration of a takeover is for "a period not less than ten (10) years" and shall continue until SUMIFRU "determines that its volume commitment has been assured" and the loans, as well as advances due to SUMIFRU shall have been fully liquidated and paid. This is a particularly onerous provision because it automatically makes all advances made by SUMIFRU due and demandable upon receipt of the takeover notice.

A very minor improvement under the [EPSA] 2014 provision is the obligation of SUMIFRU to furnish the growers with an annual Statement of Account that the growers can contest within thirty (30) days from receipt. Otherwise, the Statement of Account will be taken as correct and binding upon the grower (IDEALS, 2017 found in OXFAM, 2018)."

[10] The grounds are: a) When there is a need to protect Sumifru's volume commitment to the international market; b) When the grower fails, refuses or is unable to follow Sumifru's prescribed practices regarding farm operations to the extent that crop production is endangered; c) When condition of the crops or grower's operations are such that losses are imminent; or d) Other similar situations.

IDEALS and its partners in Mindanao and in Japan have repeatedly reached out to Sumifru to help renegotiate the AVAs to address the problematic provisions. Although Sumifru has given minor concessions such as shouldering packing costs the company has remained unmoved with regard to the other more significant provisions. The case studies and video documentary on the analysis of the contract and why it is problematic is publicly available online.

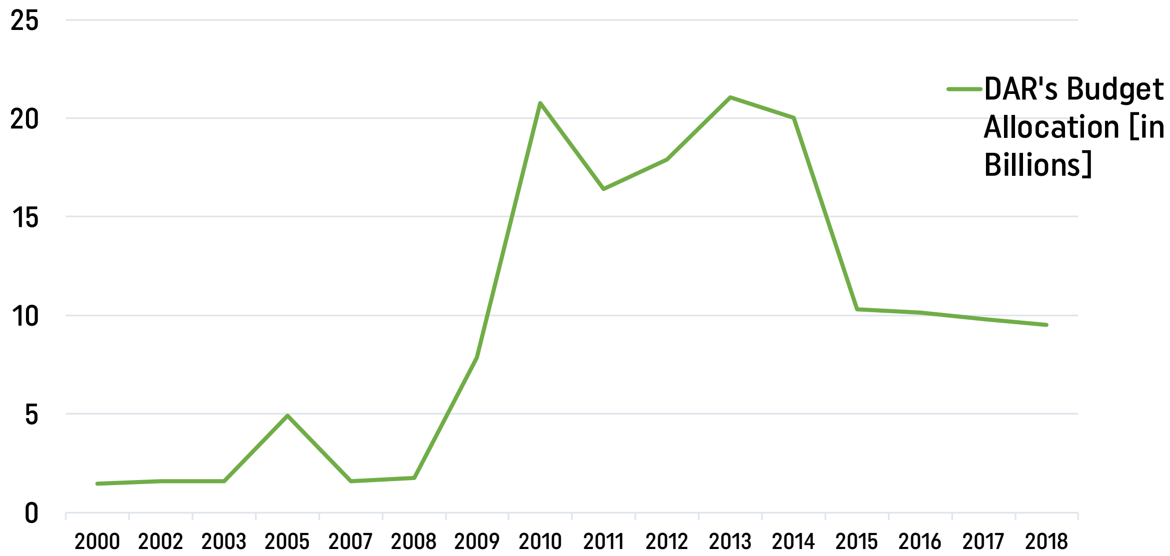
Third, there is nothing in the contract that makes Sumifru liable in case it provides substandard materials and inputs. All costs for operations, labor and farm management are on the account of the farmers as part of their Grower's undertaking[11]. This provision should also be read in conjunction with the sole provision on company support (there are no provisions on company undertaking) which states that Sumifru is only liable for partial and total losses until the bananas are weighed and accepted in the post-harvest processing plant or packing plant. It should be noted that this one of the concessions given by Sumifru. In previous versions of the contract packing costs and risks were all upon the account of the farmers[12]. Therefore, if there is damage to the crops because the production materials were of an inadequate quality, that loss is shouldered by DFBGARC as it is part of production risks and before delivery in the packing plant. This is of particular relevance to pesticides used to counter banana diseases. If the pesticides provided were, for instance, diluted at the source, the consequences of that are not borne by the Company or by the supplier contracted by the Company, but by the farmers (IDEALS 2017).

Lastly, the current buying price is fixed at USD 4.25 despite changing conditions. While lengthy contract periods under the AVAs in themselves are not problematic, they become problematic in this case because they are used to bind the farmers for a long time to the onerous provisions of the contract. Although neither force nor coercion are present to vitiate consent, consent remains problematic because it was not fully and intelligently obtained. The AVA contracts are written in English, and the terms and conditions are not explained to the farmers. The farmers signed right away trusting Sumifru as their former employer who had supported the production completely when they were still farm laborers. They were not made to understand the risks and obligations that come with a production contract.

[11] "III. GROWER'S UNDERTAKINGS
xxx
5. The GROWER shall continue to undertake and fund the labor, materials and management of the Farm operations, including but not limited to plant care and fruit care, pes and disease control, maintenance and improvement of drainage and block roads and harvesting operations. As such, all cost for said operations are for his/her/its account."

[12] "I. COMPANY SUPPORT
1. Manufacturing Cost – The GROWER hereby allows and authorizes the COMPANY or its service provider to carry out the packing/processing of export-quality bananas delivered to and accepted by the COMPANY at the designated packing plant, for whatever market the COMPANY desires. The packing labor will be for the account of the COMPANY. The GROWER shall retain the ownership of the bananas until the COMPANY weighs and accepts the same at the packing plant. The risk on partial or total loss shall thereafter be the responsibility of the COMPANY."

Figure 1: Department of Agrarian Reform Budget Allocations over the period 2000-2018



The Supreme Court in Lim vs. San[13] explained that "[c]onsent in contracts presupposes the following requisites: (1) it should be intelligent or with an exact notion of the matter to which it refers; (2) it should be free; and (3) it should be spontaneous. Intelligence in consent is vitiated by error; freedom by violence, intimidation, or undue influence; and spontaneity by fraud. Thus, a contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable." Otherwise stated it means that a contract where consent is not intelligent, free, and spontaneous, is defective and can be voided under Philippine law. The farmers do not want to pursue judicial remedy for fears of legal costs and reprisals.

For example, the contract stipulates that the buying price is fixed at USD 4.25 per box, even if market prices change. The farmers then are deprived of the opportunity to earn more because the price is fixed over the duration of the contract (IDEALS, 2017 DFBGARC, DFC PAWARBCO and SELECTA have been asking the Sumifru Management to increase the buying price of Cavendish Banana during their economic review. However, Sumifru has been unresponsive regarding this concern. In this case, one lawyer of IDEALS explained that there is no existing guideline to set the standard retail price of banana. Hence, the contractual arrangement between the buyer and farmers is the only basis of the buying price of Cavendish banana (personal communication, February 15, 2019). All of these problematic provisions are incorporated in the AVAs of DFBGARC, DFC PAWARBCO and SELECTA.

As the implementing agency of AVAs, DAR has failed to promote the rights and interests of farmers due to administrative and fiscal constraints. Currently, there is only one Provincial Agrarian Reform Officer (PARO) who is in-charge in reviewing "production/ contract, growing/growership, marketing contract, management contract, service contract and other emerging schemes where there is no transfer in the use and possession of the land in favor of the investor" (Sec.4.5, DAR A.O. No 9 s. 2006).

Aside from administrative constraints, the lack of financial resources is a major concern of DAR. The table below shows that DAR's budget allocation has been quite low for many years. The highest DAR's budget allocations were given over the period 2010-2014. Such allocations were used to complete the implementation of CARP before the end of term of

[13] Lim vs. San, G.R. No. 159723. (Supreme Court, 2004)

former President Aquino in 2016. The caveat here, however, was that DAR's 2015 budget, P10.26 billion, was half of its budget in 2014—P20.003 billion. The biggest cut was in the budget for compensating land owners whose lands were placed under the agrarian reform program. Nevertheless, the DAR's 2014 budget was still low. This was only 1.36% of the General Appropriations Act (GAA) for Fiscal Year (FY) 2014 worth P1.608 trillion.

Given this, financial institutions like LBP must be conscious and selective in using the AVAs of ARBs as a collateral substitute for their loan programs. It should be noted that AVA is not part of the basic requirements of APCP loan. Nevertheless, LBP used DFBGARC's AVA as a collateral substitute for farm rehabilitation loan. This is an internal agreement between LBP, Sumifru and DFBGARC. Most importantly, the implementation of AVAs is still problematic because of administrative and financial constraints within DAR. Even if DFBGARC, DFC PAWARBCO and SELECTA received farm rehabilitation loans from LBP, they would not be able to benefit from it fully due to existing unfair provisions in their AVAs.

Business case for sustainability and forward-looking stress testing

Supporting and encouraging fair and sustainable contracts will also benefit both LBP and Sumifru in the long run. Research has found that there is a positive relationship between responsible business and financial performance. (Margolis and Walsh, People and Profits, 2001; Orlitzsky, Organizational Studies, 2013)

The CDP Worldwide group studied 500 companies in 2014 and found that found that those that build sustainability into their strategies outperform their peers. For example companies that plan to address their climate change impact had an 18% higher return on equity. This is supported by other research that have all found that companies that engage in responsible business conduct and strategic sustainability have consistently outperformed its peers by as much as 4% to 6% in value and a consistent growth rate and stability over time despite market crunches and downturns. (Koh, Qian and Wang, Strategic Management Journal, 2013; Perez de Toledo and Bocatto, Canadian Accounting Association, 2014; Eccles, Ioannou and Serafeim, Management Science, 2011)

Investors also value companies that have strong stakeholder relationship management practices and linkages. (Henisz, Dorobantu and Nartey, Strategic Management Journal, 2013; Wang and Choi, Journal of Management, 2010) This is because conflicts can disrupt the value chain and affect production and operations resulting in loss of both profits and good will. Taking the local example of the Hijos Agrarian Reform Beneficiaries Cooperative (HARBCO) case that is currently embroiled in disputes with Lapanday Food Corporation. The farmers are buried in PHP 780 Million debt. At least 407 hectares of their land are under "takeover" by Lapanday and the rest are no longer operational due to lack of capital and lack of access to credit. Though the farmers, who are economically less privileged bear the brunt of the losses, Lapanday's export volume commitment is also affected by the ongoing conflict. (IDEALS, 2017)

Applying a forward-thinking stress test to a case where a loan from any financial institution is preconditioned and interlinked with a problematic and contentious production contract the risk of loan default and damage to reputation is increased. Starting 2020, sustainability reports will be mandated by the Securities and Exchanges Commission (SEC) for all publicly listed companies (PLCs). Such reports are required to be featured on the websites of PLCs. If a listed financial institution claims to be sustainable and responsible in their reports but will be later on found to have supported and engaged in irresponsible business conduct and practices, the SEC has the mandate to penalize and sanction any erring PLC for misrepresentation and false statements in their sustainability report. The same may possibly apply to the Environmental, Social and Governance policy framework that the Bangko Sentral ng Pilipinas is set to launch in the near future. Taking this into consideration, it can then be seen that regulatory and compliance risk is also heightened.

CONCLUSION

The lack of traditional collateral such as real estate limits access to finance for rural borrowers. Hence, formal financial institutions must learn to employ informal lender techniques such as collateral substitutes to improve access to credit in rural areas. An example of this is the case of the Philippines wherein rural borrowers—specifically ARBs—are not allowed to use their lands as collateral due to CARP provision.

On that note, the use of ARBs' AVA as a collateral substitute is a strategic way to improve farmers' access to formal credit. This is one way to reduce the risk of loan defaults which is a common issue among farmers in terms of credit. At the same time, small farmers are able to get indirect financing from banks through the aid of agribusiness firms.

The caveat is that DAR has approved unfair AVAs which are being used by LBP as a collateral substitute for farm rehabilitation loans to reduce the risks of loan defaults. After Typhoon Pablo devastated the banana plantations in most parts of Mindanao in 2012, a number of ARBOs were forced by their circumstances, having no support from the government and their private sector partner and no capital of their own, to obtain a loan for farm rehabilitation. These loans were granted under the LBP's Rehabilitation Program for Cavendish Banana Production and APCP. The caveat is that these AVAs contain a number of problematic provisions. One of the problematic provisions that can be seen in the AVAs and tripartite agreements of DFBGARC, DFC PAWARBCO and SELECTA is the takeover clause. The dangers of which have been discussed above. The major concern on the takeover clause is the vague conditions for the take-over. The phrase "other similar situations" makes it possible for Sumifru to exploit any situation in order to justify a takeover. Most importantly, the contract does not provide for loanany grievance procedure, thereby making the power of Sumifru to affect the takeover. Such provision directly negates the essence of CARP, which is to allow ARBs to gain control over their economic resources.

As a government financial institution (GFI), LBP is mandated to lend to small farmers and fisherfolk (Landbank, 2014). LBP's functions must go beyond income and profits. This is what differentiates LBP from other commercial banks. LBP's developmental mandate must come before income and profits. Hence, LBP must be conscious and selective in using the AVAs of ARBs as collateral substitutes. This is one way.

REFERENCES

Balkenhol, B. and Schütte, H. (n.d.). Collateral, Collateral Law and Collateral Substitutes. Retrieved from: http://www.oit.org/wcmsp5/groups/public/---ed_emp/documents/publication/wcms_117987.pdf

Department of Budget and Management (2000). General Appropriations Act, FY 2000 (Department of Agrarian Reform)

Department of Budget and Management (2003). General Appropriations Act, FY 2003 (Department of Agrarian Reform)

Department of Budget and Management (2005). General Appropriations Act, FY 2005 (Department of Agrarian Reform)

Department of Budget and Management (2007-2018). General Appropriations Act, Fiscal Years 2007-2018 (Department of Agrarian Reform)

Eccles, R. G., Ioannou, I., & Serafeim, G. (2014). The Impact of Corporate Sustainability on Organizational Processes and Performance. Management Science, 60(11), 2835–2857.

Feder, G., Onchon, T. and Raparia, T. (1988). Collateral, Guaranties and Rural Credit in Developing Countries: Evidence from Asia. Retrieved from: file:///C:/Users/PC23/Downloads/agec1988v002i003a005%20(1).pdf

Food and Agriculture Organization (2016). Multi-sectoral study on the Agribusiness Venture Arrangement (Ava) policy and implementation under the Comprehensive Agrarian Reform Program . Rome.

Henisz, W. J., Dorobantu, S., & Nartey, L. J. (2013). Spinning gold: The financial returns to stakeholder engagement. Strategic Management Journal, 35(12), 1727–1748.

Koh, P.-S., Qian, C., & Wang, H. (2013). Firm litigation risk and the insurance value of corporate social performance. Strategic Management Journal, 35(10), 1464–1482.

Land bank (2014). Vision and Mission. Retrieved from:https://www.landbank.com/about-us/about-landbank/vision-and-mission

Llanto, G. M. and Orbeta C.O. (1999). Loan Guarantee Programs for Small-scale borrowers: Are they working? PIDS The Policy Notes, No.99-03, pp. 1-4.

Llanto, G. (2004). Rural finance in the Philippines: a continuing saga in policy challenges. PIDS The Policy Notes, No. 2004-06, pp.1-4.

Llanto, G. (2005). Rural Finance in the Philippines: Issues and Policy Challenges. Retrieved from: https://dirp4.pids.gov.ph/ris/books/pidsbk05-ruralfinance.pdf

REFERENCES

Llario, D. A. (2014, September 29). SUSTAINABLE COMPANIES SCORE BIGGER RETURNS ON INVESTMENT. Retrieved from https://www.theclimategroup.org/news/sustainable-companies-score-bigger-returns-investment.

Margolis, J.D. and Walsh, J.P. (2001) People and Profits? The Search for a Link between a Company's Social and Financial Performance. Psychology Press, Hove.

Nagarajan, G. and Meyer, R.L. (1995). Collateral for Loans: When does it matter? Retrieved from: https://kb.osu.edu/bitstream/handle/1811/66599/1/CFAES_ESO_2207.pdf

Orlitzky, Marc & Schmidt, Frank & Rynes, Sara. (2003). Corporate Social and Financial Performance: A Meta-Analysis. Organization Studies. 24. 10.11

Oxfam. (2018). Good and Bad Practices in the Export-Driven Banana Industry in the Philippines. In Business and Human Rights in the ASEAN: Procedures, Responsible Investments, and Making the Case for Women (pp. 61–93).

Toledo, E. P. D., & Bocatto, E. (2014). The Impact of Environmental, Social and Governance (ESG) Standards on the Value of Cash Holdings: Evidence from Canadian Firms. SSRN Electronic Journal.

Wang, H., & Choi, J. (2010). A New Look at the Corporate Social–Financial Performance Relationship. Journal of Management, 39(2), 416–441. doi: 10.1177/0149206310375850