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POSITION PAPER ON HOUSE BILL NO. 5085

“AN ACT REGULATING THE ESTABLISHMENT AND IMPLEMENTATION OF AGRIBUSINESS VENTURES ARRANGEMENTS (AVAs) IN AGRARIAN REFORM LANDS”

I. Rationale

The 1987 Constitution lays the basic foundation and nature of agrarian reform:

The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing¹

To uphold the institutionalization of agrarian reform as provided for in the 1987 Constitution, the Comprehensive Agrarian Reform Program Law (CARL) or RA 6657 was passed into law in 1988. This landmark legislation had guaranteed secured land access of landless farmers and tillers to own, cultivate, and manage the land distributed under the agrarian reform program. CARP not only involves the transfer of land ownership of large individual land owners or corporation to their tenant farmers or farm worker, the law also intended to provide support services to the Agrarian Reform Beneficiaries (ARBs). The ARBs are expected to make their own land productive given the State’s intervention and support especially on small to medium investments in infrastructure, organization of farmer’s cooperatives, extension of credit for agricultural inputs, assistance in marketing of agricultural products,² as well as engagement of ARBs in joint ventures and lease arrangements.

Support services to ARBs encompass the activities geared towards sustainability of the farm and the development of the ARBs and their community. Agribusiness Venture Arrangements (AVAs) are

¹ Section 4, Article 3 of 1987 Philippine Constitution

² Food and Agriculture Organization of the United Nations. 2016. The Multi-sectoral study on the Agribusiness Venture Arrangement (AVA) policy and implementation under the Comprehensive Agrarian Reform Program Study. Retrieved August 1, 2017 <<http://www.fao.org/3/a-i6239e.pdf>>

agribusiness agreements between ARBs and private investors to engage in processing, marketing and value-addition of the ARBs' products, emancipating them from poverty.

Due to insufficient support services provided by the government to ARBs, the private sector was encouraged to augment the delivery of support services. However, numerous AVAs were unwittingly entered into by ARBs that were onerous and detrimental to their interest. Based on documented AVAs, there are agreements that deprive and compromise the control, access and management of ARBs over their awarded lands. Many agreements have unfair commodity pricing, inequitable lease rentals, unconscionable periods which in many cases exceed the life span of the farmers. Arrangements were also entered into by ARBs through coercion, deceit, fraud and threats from other parties involved which defeat the intent and mandate of our agrarian laws. These are largely due to the ARBs' lack of capacity to fully understand, analyse and negotiate terms and conditions of AVAs.

The Department of Agrarian Reform (DAR), the lead implementing agency of CARP has promoted and supported the AVA endeavor of the ARBs. RA 6657 provided for a governing policy provision on AVAs:

*"In general, lands shall be distributed directly to the individual worker beneficiaries. In case it is not economically feasible and sound to divide the land, then they shall form a workers' cooperative or association which will deal with the corporation or business association or any other proper party for the purpose of entering into a lease or growers' agreement and for all other legitimate purposes"*³

AVA is an "entrepreneurial collaboration between ARBs and private investors to implement an agri-business venture on lands distributed under CARP"⁴. AVAs take the form of growership, contract growing, marketing contract, service contract Built-Operate-Transfer, joint venture agreements, lease agreements, production, processing and marketing agreements, and management and service contracts. AVAs are envisioned to sustain farm operations and enhance productivity of awarded CARP lands to the ARBs by means of access to support services such as capital, farming technology and market as provided by the private investors.

DAR reported that there were 433 AVAs covering 57,734.29 hectares involving 45,399 ARBs as of October 2015.⁵ Moreover, DAR stated that the preferred mode of AVAs is the lease agreement where 63% of the total land is devoted to some form of lease arrangement and 77% of the contracts pertain to lease.⁶ The figure stated above may be understated since DAR failed to have an inventory of all existing AVA contracts.

Despite the intention of the AVAs to help support the business development of ARB farms to make fruitful their own awarded land, the implementation and execution of AVA contracts between the ARBs and the private investors with the objective of helping the ARBs additional household income and becoming farm business entrepreneurs are not satisfied. In fact, the ARBs lost control over their own land and was buried in debt to the private investors with ARBs being subjected to disadvantageous and unfair contracts. Existing AVAs have defeated the very purpose of Land Acquisition and Distribution (LAD) of

³ Section 29 of RA 6657

⁴ Manahan M.A and Tadem E.C. 2017. Going Bananas. Retrieved July 31, 2017 <<https://www.rappler.com/trending/%20alternative%20venture%20agreement>>

⁵ Manahan M.A and Tadem E.C. 2017. Going Bananas. Retrieved July 31, 2017 <<https://www.rappler.com/trending/%20alternative%20venture%20agreement>>

⁶ Food and Agriculture Organization of the United Nations. 2016. The Multi-sectoral study on the Agribusiness Venture Arrangement (AVA) policy and implementation under the Comprehensive Agrarian Reform Program Study. Retrieved August 1, 2017 <<http://www.fao.org/3/a-i6239e.pdf>>

CARP for ARBs to own, manage, and cultivate their own land and ironically brought back the unfair landowner-tenant relationships.

A 2016 study by Oxfam and IDEALS on examining five (5) AVAs in Mindanao highlighted the most challenging issues faced by the ARBs and their cooperatives:⁷

1. Financial control devices written into the contract guaranteed the banana farmers' full dependence on their buyer, with their buyer having near-absolute full control over the cooperative's financial health.
2. The contracts also reveal a clear bias in favor of the buyers.
3. The contracts also offer no effective remedy against abuses.
4. Government failed to effectively regulate AVA's, and to empower farmers to negotiate from a position of strength. The Department of Agrarian Reform failed to protect the interests of agrarian reform beneficiaries (ARBs) who enter into such agreements, by failing to provide legal and technical support to ARBs, most of whom lack the capacity to negotiate from a position of strength, to ensure fairer contractual terms.

Despite the guidelines issued by the DAR on AVAs particularly the Administrative Order No.9 Series of 2006 which regulates the Agribusiness Venture Arrangement scheme, DAR failed to enforce such order resulting to ARBs losing control over their own lands and investor *taking over* CARP awarded lands.

Another study conducted by the Food and Agriculture Organization (FAO) and DAR in 2016⁸ showed that there are a *"very few examples of successful agribusiness arrangement between ARBs and investor-companies"*. The ARBs are always at the losing end of the arrangement mainly because ARBs are not aware of their entitlement. There is a need to renegotiate for fairer contract provisions and agreements should be made mutual and not unilateral. Capacity building should be provided to the ARBs in aspects of business, legal, institutional governance and financial management for the ARBs to properly engage in AVAs without them losing control over management of their own lands.

Given these gaps, there is a need to revisit existing policies on AVAs that should address issues faced by the ARBs toward social justice and rural development. Passage of these proposed measures and laws are urgently sought. House Bill No. 5085 is an important policy proposal that seeks to improve the lives of the ARBs and will address the issues and challenges they faced in various AVA engagement.

Kaisahan Inc. hereby supports the passage of proposed measure HB 5085.

II. House Bill No. 5085

Kaisahan supports the provisions stipulated in HB 5085.

⁷ Oxfam and Ideals. October 2016. A DESTINY OF DEBTS: Unmasking the Prejudicial Contracts in the Philippine Banana Industry. Retrieved 31 July 2017 http://makefruitfair.org/wp-content/uploads/2017/01/Destiny-of-Debts-Policy-Brief-8_Final-1.pdf

⁸ Food and Agriculture Organization of the United Nations. 2016. The Multi-sectoral study on the Agribusiness Venture Arrangement (AVA) policy and implementation under the Comprehensive Agrarian Reform Program Study. Retrieved August 1, 2017 <<http://www.fao.org/3/a-i6239e.pdf>>

HB 5085 seeks to institutionalize the establishment and implementation of AVAs. The bill promotes productive and collaborative ventures between private sectors and the ARBs and transform ARBs into farmer entrepreneurs as well as maximize distributed agrarian reform lands without compromising the farmers' tenure rights.

Important provisions of HB 5085 address the current issues and concerns faced by the ARBs engaged in venture arrangements:

- Section 5 of HB 5085 Agribusiness Venture Agreement.

Sec. 5 Agribusiness Venture Agreement. Individual ARBs and ARB cooperatives or associations, who are bonafide holders of Emancipation Patent (EP), Certificate of Land Ownership Award (CLOA) or similar tenurial instruments issued by the Department of Agrarian Reform (DAR) or its predecessor may enter into any of the following Agri-business Venture Arrangements, namely: Growership, Contract growing, Marketing Contract, Management Contract, Service contract Build-Operate-Transfer, Joint Venture Agreements, Lease Agreements; and any combination of the foregoing AVAs without violating any provisions of this Act.

- Section 7 of HB 5085 Mandatory provisions of the AVAs:

- A. Only two-thirds of the entire area shall be subjected to the AVA, the remaining one third portion shall be exclusively controlled and used by the ARBs with full support from the government.
- B. The contract shall guarantee participation of the ARB/s in the farm management operations and shall include, among others, capacity building programs aimed to facilitate transfer of technology and management techniques to the ARBs.
- E. The AVA shall be subject to the approval of the PARC Executive Committee (EXECOM). Otherwise, it shall become void and unenforceable.
- K. An alternative dispute resolution mechanism in resolving disputes between the parties shall be established.

- Section 8 of HB 5085 Control over agrarian reform lands:

In any AVA, control over the agrarian reform lands shall always remain with the agrarian reform beneficiaries. For this purpose, joint venture agreements between agrarian reform beneficiaries and investors which result to a minority equity of the agrarian reform beneficiaries shall not be allowed or approved by PARC EXECOM. Also, any provision of permanent take-over in the AVAs that takes away the management of the agricultural production in growership contract or contract growing agreement shall be void.

- Section 12. Support Services for the ARBs entering AVA.

The State shall establish an AVA Capacity Building Program with sufficient funding from the General Appropriations Act. The purpose of the capacity building program is to strengthen the farmer's ability to negotiate fairer terms for agribusiness contracts, deal with markets, harness local and international opportunities, and identify and act on onerous agreements to protect their rights

Investments to ensure agricultural productivity combined with approaches to equip farmers not only in business development skills but also with the knowledge to decide engaging in business ventures are support services mechanisms that the farmers need that should be put in place by the State.

The overall framework of HB 5085 provides for the security of the ARBs in engaging to any venture agreements. HB 5085 is a responsive proposed policy that secures ARB's property rights and demonstrates the general objectives that AVAs should work to the best interest of the ARBs and their cooperatives.

With this, Kaisahan Inc. expresses support to the passage of HB 5085.