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est. 1990

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Position Paper on HB 555

“AN ACT INSTITUTING GENUINE AGRARIAN REFORM IN THE COUNTRY AND CREATING THE MECHANISM FOR ITS IMPLEMENTATION AND FOR OTHER PURPOSES”

Kaisahan Inc. applauds and commends the efforts of policy makers that continuously work towards the improvement of the lives of the landless tillers and farmer beneficiaries. Kaisahan encourages policy proposals and review of existing laws that will uplift and address the welfare of the landless tillers towards social justice and rural development.

HB 555 or the “Genuine Agrarian Reform Bill” is one of the proposed policies this 17th Congress that proposed an alternative solution to the institutional implementation of agrarian reform in the Philippines. An in-depth analysis of the proposed measure is therefore highly encouraged whether the bill conforms to the legal framework of agrarian reform as provided for in the 1987 Philippine Constitution.

Kaisahan hereby submits to the Committee on Agrarian Reform the organization’s initial comments on HB 555 as follows:

1. Prohibition of just compensation to the expropriated lands

The acquisition through expropriation and confiscation of “Sullied Landholdings” in Section 14 and 15 of HB 555, defined as “landholdings acquired through fraud, deception, intimidation, or the use of force or violence”, clearly states that no compensation will be given to the land owner of the “sullied lands”. The acquisition and confiscation of lands by the State without provision of just compensation may be a violation of the 1987 Philippine Constitution Article III Section 9 that states: “*Private property shall not be taken for public use without just compensation*” and Article XIII Section 4 “*just distribution of all agricultural lands xxx subject to the payment of just compensation*”. HB 555 also states that even non-land assets and residential property shall be subjected for confiscation once the land property is identified as “Sullied”.

The implementation of agrarian reform in the Philippines although revolutionary through acquisition of land by the State, provides for measure to compensate the land owners justly. The mandated agrarian reform program is not a land confiscation per se; land owners' fundamental rights shall also be protected by the State.

2. *Due process and equal protection of the law*

When "Sullied lands" are identified by the State and the People's Coordinating Council for Agrarian Reform (PCCAR), confiscation will proceed immediately 3 days after. Land owners of these "Sullied Landholdings" can contest the findings of the Department of Agrarian Reform (DAR), but only whether they will be allowed or entitled to just compensation or not (Section 21). There is no merit to the appeal of landowners to question or challenge the findings of the Department or verify the validity of the findings and the list of sullied landholdings. This in effect is a violation of Article III Section 1 of the Constitution that states "*No person shall be deprived of property without due process of the law, xxx and denied equal protection of the laws*".

3. *Expansion of the scope and coverage of the lands covered under agrarian reform.*

HB 555 intends to greatly expand the coverage and scope of lands under agrarian reform. More than the private agricultural lands, the bill intends to distribute other lands such as forest, timberland, foreshore lands, even lands of the public domain that should not be alienated. The constitution clearly stated that only agricultural lands of the public domain shall be alienated (Article XII Section 3).

The intention is clear to include other classification of lands as agricultural lands since the bill defined "agricultural land" as lands regardless of classification, with agricultural use and lands with potential for agriculture which inadeptly covers forest and minerals lands. Foreshore, pasture, livestock, and cattle also to be included in the coverage.

Other lands of the public domain that are not subject for alienation are currently governed by existing laws and policies. Foreshore land, as an example, form part of the forestland as mangrove areas are covered under the public domain to which these lands cannot be titled and own, but can be lease, managed and utilized by personal or private entity. This is reaffirmed by a Supreme Court decision G.R. No. 146616 SIAN Enterprises Inc vs. F.F Cruz & Co. Inc, that Foreshore land "for being a part of the public domain, ownership of the area could not be acquired".¹

¹ <http://sc.judiciary.gov.ph/jurisprudence/2006/august2006/G.R.%20No.%20146616.htm>

This also pose another question to the intention of the bill whether it intends to give ownership to the farmer beneficiaries or it provides for a stewardship program to the farmer beneficiaries.

Moreover, if the bill will cover agricultural lands based on their use as well as *potential* agricultural lands, and lands exempted by the Constitution as agrarian reform lands and other declared by the Supreme Courts, and existing laws, it will cause instability in our present system of laws and government. One proposed law that supersedes existing laws and policies not covered by agrarian reform policies will not only pose threat to our system of government and the implementation of such policies, but to the welfare of the beneficiaries involved when policy and implementation conflicts arises.

4. Agrarian reform or Stewardship?

If the intention of the State is to cover not just private agricultural lands but other lands of the public domain as stated in the proposed bill, for distribution to the farmer beneficiaries, stewardship is the appropriate instrument to implement this bill.

Agrarian reform as defined in the 1987 Philippine Constitution clearly stated the distribution of lands should be owned by the beneficiaries: ***“The State shall, by law, undertake an agrarian reform program founded on the rights of the 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”***². HB 555 seemingly coheres to this as reflected with Section 7, 8, and 10, which discusses prioritization of lands for distribution as well as the issuance of Title of Full Emancipation in Section 11 that serves as the ownership title to be awarded and distributed to the farmer beneficiaries. However, there is qualifier to this as Section 48 of HB 555 clearly stated that “The sale, mortgage, transfer or any conveyance or disposition of the lands awarded to farmer-beneficiaries shall be prohibited”. Transfer of the property shall be exclusive by hereditary succession provided that the heir will be willing to personally till the land. Moreover, even if the farmer beneficiaries have been issued Title of Full Emancipation, if he/she can no longer till the land, the land should be turned over to the farmers’ organizations or the State. This is clearly not ownership right. The State, through the Department, guarantees stewardship, but not ownership.

If the approach for agrarian reform is indeed stewardship program, then lands of the public domain that should not be alienated such as timber and forest land can be included in the scope

² Article XIII Section 4 of the 1987 Constitution

or coverage but the “Title of Full Emancipation” as a form of tenorial instrument should be for stewardship or lease and not for ownership title.

5. Retention Limit

Section 4, Article XIII of the Constitution guarantees retention of lands to the land owners to with: “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 xxx. In determining retention limits, the State shall respect the rights of the small landowners”. HB 555 does not clearly provide as to how large or small the landowners will retain the portion of lands covered under agrarian reform. Although the bill seeming provides for it as expound in Section 18 that states “Lands below (5) hectares and the lands of the middle-income and higher income farmers shall not be expropriated” to which the rule on retention is seemingly applied. However, the same section also encouraged landowners who do not personally till land to sell the 5 hectares retained lands. Section 17 also fails to distinguish whether lands not exceeding fifteen (15) hectares but are more than (5) five hectares will be expropriated in its entirety or excluding the supposedly (5) hectares retained areas for the land owners. The bill implies that all retained lands shall be expropriated, with the exception of small, medium, and higher-income farmers, but is not the clear as to the extent of expropriation the State or the Department will exercise.

6. Free Land Distribution

While Kaisahan questions some of the constitutional legality of the bill, Kaisahan supports some of the important provisions provided in HB 555 such as the free land distribution and condonation of amortization for existing CLOA/EP holders as well as to the new farmer beneficiaries identified under the program (Section 8 and 9).

Moreover, there are provisions in the bill that are already present in the CARPER law such as indefeasibility of the titles issued under CARP and the exclusive jurisdiction of DAR to AR cases.

CARP and CARPER law, though imperfect, resulted to the improvement of lives and security of land tenure of many agrarian reform beneficiaries that must be further improved and continued and should not be abandon. CARP and CARPER is still unfinished because of the resistance by the landowners and inefficient implementation of the Department of Agrarian Reform.

Although June 30, 2014 marked the Government's deadline to issue Notices of Coverage (NOCs) in all agrarian reform areas in the country, the deadline, however, did not indicate the end of agrarian reform implementation. This is expounded by Section 30, Resolution of Cases of RA 9700, which states that "Any case and/or proceeding involving the implementation of the provisions of RA 6657, as amended, which may remain pending on June 30,2014 shall be allowed to proceed to its finality and be executed even beyond such date. This was supported by the Department of Justice Opinion 59 and 60 of 2013 which state "The 30 June 2014 deadline indicated in RA 9700 is merely directory and not mandatory, as it simply emphasized the importance and urgency of the implementation of the Comprehensive Agrarian Reform Program (CARP), ideally within the time frame provided." HB 555 also recognizes the existence of RA 6657 as amended by RA 9700 when the repealing provision includes the repeal of the said law.