

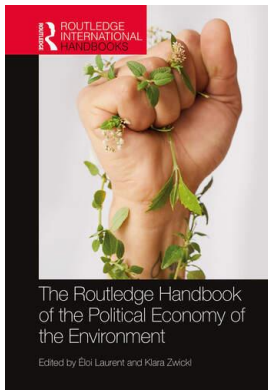
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9

CONTRACTS AND DISPOSSESSION

Agribusiness venture agreements in the Philippines

Alfredo R. M. Rosete

Introduction

The economic literature has argued that partnerships between smallholders and agribusiness firms can propel rural development. These benefits accrue through two channels. First, agribusiness firms can create linkages between the farm and non-farm sectors. Since high-valued crops are cultivated for export rather than direct consumption, smallholders need to purchase fertilizers and pesticides to meet market standards. Further, in order to bring crops to markets, producers need to form links with transport and logistics firms (Briones 2015; Reardon & Barrett 2000; Wang et al. 2014). Second, agribusiness firms can help relax constraints that prevent smallholders from using their holdings to generate viable livelihoods (Otsuka et al. 2016). For example, agribusiness firms provide inputs such as fertilizers, chemicals, and infrastructure, so that smallholders no longer need to enter disadvantageous credit arrangements with creditors and vendors who exercise market power (see e.g. Ghosh & Ray 2016; Shami 2012).

Despite these possible advantages, scholars (Amanor 2012; Cáceres 2015; Jiwan 2013) and civil society groups (see e.g. Colchester et al. 2011) have reported cases where governments and agribusiness firms take coercive or deceptive actions, allowing them to evict, threaten, or underpay smallholders. Coercive activities, however, do not explain all adverse contracts. Smallholders may voluntarily enter contracts where they lose rights to their land to relieve costs, credit constraints, and risks (Wilson 1986; Singh 2002). In other words, the constraints that agribusiness firms are supposed to alleviate can themselves become avenues for dispossession.

This chapter describes the conditions under which voluntary agribusiness partnerships become avenues of dispossession through the experience of agrarian reform beneficiaries (ARBs) in the Southern Mindanao region of the Philippines. I will show that the institutional environment and the organizations that govern the ARBs set the parameters they consider when bargaining with agribusiness partners. These, in turn, generate incentives for ARBs to choose contracts where they effectively cede rights to their land.

This study is significant for three reasons. First, it uses the experience of ARBs to show how institutional and political conditions affect the parameters of bargaining in the context of agribusiness investment. Second, the study focuses on contracts to argue that it is configurations of rights in a contract, rather than contract types, that lead to effective dispossession.

The theoretical framework conceptualizes property rights as a set of abilities over an asset. Such a framework has often been applied to problems of natural resource use (Cole & Cole 2002, Cole & Grossman 2002). However, to my knowledge, it has not been used in the context of agribusiness contracting. Finally, the study complements current literature on land acquisitions by showing how even voluntary transactions can result in dispossession.¹ Finally, the findings of this chapter point to social and economic vulnerabilities that prevent smallholders from undertaking more environmentally sustainable small-scale, labor-intensive agriculture, and maintain the dominance of industrial agriculture.

The chapter is arranged as follows: the second section will set out the context of agribusiness partnerships, its relationship to land reform in the Philippines, and the theoretical framework for the analysis. The third section describes the fieldwork and methodology. The fourth section discusses the findings. I begin by summarizing each group's histories and how these histories resulted in certain attributes. I then discuss how these attributes enhanced their ability to get more favorable contracts with their agribusiness partners. The fifth section discusses the consequences of these contracts on the ARBs' incomes and control over their holdings. The last section discusses how the findings inform policies for agribusiness partnerships.

Agribusiness partnerships: context and theory

In 1988, after the ouster of Ferdinand Marcos, the Philippine House of Representatives passed the Comprehensive Agrarian Reform Law (CARL). Land reform was a policy promise of the new Aquino regime to civil society organizations following the death of 13 farmers during a protest dubbed the "Mendiola Massacre." While allegedly written with minimal consultation from peasant and farmer organizations (Putzel 1992), its stated objectives are to achieve "a more equitable distribution of land" founded on "the rights of farmers and regular farmworkers to own directly or collectively the lands they till, or, in the case of other farmworkers, receive a just share of the fruits thereof" (Republic of the Philippines 2009, Ch. 1, Sec. 2). To implement CARL, the Department of Agrarian Reform (DAR) created the Comprehensive Agrarian Reform Program (CARP).

Soon after the implementation of CARP in 1988, the DAR observed that smallholders were entering into a variety of contracts with agribusiness investors. Recognizing their potential benefits, the Philippine government sought to encourage these arrangements, attempting to put in place regulations that would ensure ARB welfare under such contracts (DAR 2006b). These arrangements were termed agribusiness venture agreements (AVAs). The official definition of an AVA is an "entrepreneurial collaboration between ARBs and private investors to implement an agribusiness venture on lands distributed under CARP" (DAR 1996, 2006a). Through these agreements, ARBs can raise the productivity of their holdings through accessing upstream markets, capital, and farming technology. Further, ARBs can supposedly seek the state's assistance, since the DAR's local governments keep files of the certificates of land ownership award (CLOA), and the contracts that ARBs and agribusiness entities sign.

A 2010 report released by the Philippines' Inter-Agency Committee on Institutional Arrangements for Land Management and Rural Development² states that AVAs cover approximately 1.2 million hectares or 12.41% of total agricultural land and 29.64% of all land distributed under CARP as of 2009³ (cited by IBON 2013). The large disparity between this figure and the DAR's official list of 50,103 hectares was acknowledged when I spoke to the DAR authorities in the town of Santo Tomas. When I had quoted these figures, one of them quipped, "*Parang dito lang yata, ganyan na kadami*" ("Maybe in this province alone, there's already that many"). They said they were still catching up with listing all AVAs.

The optimism of agrarian reform officials regarding the development potential of AVAs, however, was not widely shared by land reform advocates. In recent years, scholars have compiled cases of AVAs resulting in adverse outcomes for ARBs (see e.g. Borrás 2007; Menguita-Feranil 2013; Adam 2013) showing how ARBs in certain areas of the country are compelled to accept contracts that leave them with neither control over land or income from its use. These reports point to an inherent problem with the policy of encouraging agribusiness partnerships for rural development. Behind the AVA policy is the idea that with property rights assigned to the ARBs, partnerships with agribusiness firms can function as a means for them to improve the use of their land, effectively becoming rural entrepreneurs.

This idea stems from the economic literature on property rights. Well-defined property rights are among the bases for contracting. Secure property rights can minimize the risks of losing an asset that is used in production or the risks of losing crops (Auerbach & Azariadis 2015; Besley & Ghatak 2010). When property rights are secure, partners to a contract can ensure that their investments are safe. Secure, well-defined property rights do not mean, however, that an asset holder will have control once the contract is in force. In reality, contracts also reassign certain abilities to each partner that can determine who effectively controls land. This is because property rights are a set of abilities that agents have over an object or asset in question (Hodgson 2015; Arruñada 2017). Control is a matter of what abilities one party holds over land. In agribusiness contracting, the possible abilities that constitute property rights are:

- *Determining User*: The ability to determine who can work on the land, cultivate crops, and harvest. This ability extends to determining who can be employed in a partnership.
- *Determining Use*: Determine what is planted, or being able to determine whether crops will be changed.
- *Determining Methods*: Determine how crops are cultivated, including the types of fertilizer and infrastructure used.
- *Determining Withdrawal*: Determine the duration of any contract involving the land or the ability to withdraw the use of the land in a partnership.

Table 9.1 shows the differences among three broad contract types that are widely used in agribusiness partnerships (Majid Cooke et al. 2011; Majid Cooke 2012; Cramb & Curry 2012) in terms of *remuneration* and *control* (De la Cruz 2012). Remuneration refers to the sources of income that each partner gets from the transaction. Control refers to the abilities that a contract confers to each partner. We can think of lease and growership contracts as two extremes. Under a lease contract, the smallholder forfeits all control over her land and most production decisions. In the growership contract, the investor acts as a buyer of the smallholder's crops, while the smallholder makes most of the decisions on how to cultivate, what methods to use, and whom to employ. However, the investor can use monitoring mechanisms such as checking the state of crops, restricting the types of fertilizers used, and consulting with smallholders to ensure crop delivery. In between these two extremes are what I broadly call joint ventures. The decision rights that are traded in such intermediary contracts differ considerably. Some joint ventures are framed as management contracts where the investor advises and monitors cultivation. Others are arranged so that the investor builds necessary infrastructure and then transfers these to smallholders for a share of the profits. In this case, the division of control is temporal. During the building period, the investor may have all the decision-making power. After that, he may act as a consultant to a growership.

A partnership results in dispossession when those who rightfully own land by law completely lose the ability to benefit from or control their holdings. Who ends up with control

Table 9.1 Different contract types and the allocation of abilities. Arrows indicate intermediary types between contracts. Entries in “Control” cells indicate who holds the rights.

Structure of Incorporation	Remuneration		Control			
	Smallholder	Investor	User	Use	Methods	Withdraw
Lease	Wage + Lease	Profits	Joint	Investor	Investor	Investor
↑ Joint Venture	Profit Share	Profit Share	Joint	Joint	Joint	Joint
↓ Growership	Profits from sale to Investor	Export Profits	Smallholder	Joint	Joint	Joint

Source: Rosete (2020).

depends on the conditions of contracting. These operate through two channels illustrated in Table 9.2: the ARBs’ *bargaining position* and their *bargaining power*. By bargaining position, I mean what the ARBs know or perceive to be their next best alternative to a given contract. By bargaining power, I mean the formal and informal rules that govern the bargaining process between ARBs and their potential partners. Among the conditions that operate through the bargaining position are their knowledge of alternative contracts, the perceived risks, costs, and benefits associated with cultivating Cavendish bananas, and the prospects of fulfilling their obligations under CARP. Conditions that work through bargaining power are the extent that the DAR adjudicates disputes fairly and the extent to which they have access to legal institutions.

While the rules, laws, and policies governing AVAs should be uniform for all ARBs, the quality of the ARB advocates and organizations are not. The different ARB groups can develop attributes that determine how they understand their bargaining positions and participate in enhancing their bargaining power. Table 9.2 summarizes how these attributes function in the bargaining process. On the first row of Table 9.2 are circumstances generated by the law and governance. These are outside the purview of any ARB groups or individuals. Amortization payments weaken an ARB’s bargaining position since it is the cost of land ownership. The adjudication of disputes and contracts determines how fairly policymakers, government officials, and courts weigh the interests of ARBs. The second row enumerates the organizational or group attributes that affect bargaining power and bargaining position.

Some attributes affect only one of the conditions of bargaining. AVA education helps ARBs compare the costs, benefits, and risks of different types of contracts, allowing them to accurately assess their bargaining position. Organizational debt can make ARBs reluctant to take risks and more inclined toward contracts where they bear little or no costs in production. This can be consequential in selecting between a lease and a growership contract, since ARBs bear most of the costs in the latter. Legal counsel enhances bargaining power by helping ARBs understand the rules, regulations, and processes needed for contracting. They may also help ARBs anticipate whether the language of a contract creates circumstances that are detrimental to their interests.

Membership consultation affects both bargaining power and bargaining position. Ostrom (2000) and Wilson et al. (2013) argue that in order to take collective action, groups need to have avenues to inform and consult their members on key decisions. While such democratic mechanisms can be costly (Pozzobon & Zylbersztajn 2013), they help in developing solidarity

Table 9.2 The conditions of bargaining that law and governance and organizations generate

	<i>Bargaining position</i>	<i>Bargaining power</i>
Law and Governance	Amortization	Adjudication of: <ul style="list-style-type: none"> • Disputes • Contracts
Organizational/Group Attributes	AVA education Organizational debt Member consultation External advocates	Independent legal counsel Member consultation External advocates

Source: Author's own schematization.

among members and cohesion among a group's objectives (Forney & Häberli 2017). Effective collective action enhances both a group's bargaining power and its bargaining position. Effective collective action enhances the ARBs' bargaining position by easing the process of pooling resources for inputs and coordinating knowledge about AVAs, agribusiness, and banana cultivation. Second, effective collective action can also ease coordination for activities such as sit-ins and marches, which could make public officials more responsive to the demands and grievances of ARBs (Borras & Franco 2013).

External advocates such as NGOs and peasant organizations can help enhance a group's bargaining power by providing legal counsel and coordinating collective action with larger organizations and causes. Coordinating with such forces could enhance the profile of individual ARB cases and force authorities to be responsive to public opinion. Finally, they can coordinate campaigns with other forces (trade unions, etc.), which can encourage ARBs and make policymakers more responsive to their demands (Alden 2014). External advocates may also help ARBs navigate the financial system and understand alternative contract types, enhancing their bargaining position.

The attributes of the ARB groups determine the strength of their bargaining power or bargaining position. When a group develops attributes that enhances either bargaining power or bargaining position, it can maintain more abilities over its holdings and a greater degree of control.

Methodology

The fieldwork took place in the municipality of Santo Tomas and the city of Tagum in the province of Davao Del Norte and the district of Pantukan in the province of Compostela Valley. Both provinces are in the Davao region of the Philippines. The study uses both purposive and snowball sampling, selecting ARB groups that partnered with agribusiness firms. Seven ARB groups participated in focus group discussions, while 71 ARBs participated in individual interviews.⁴ While key informant interviews involved the elected leadership of the different organizations, my focus groups involved both leadership and regular members.⁵

Individual interviews yielded information on individual income, housing, and asset ownership. This information is used as anecdotal evidence to relate some of the adverse effects of agribusiness contracting, but this information has no statistical power. However, the anecdotes are illustrative of the effect of contractual types and their consequences for the ARBs.

Structured focus group discussions gave the histories of each group’s formation, contracting, and disputes and relationships with authorities and agribusiness partners. Each group also provided copies of their different contracts that contain the rights and abilities, which are my primary outcomes of concern.

The lands awarded to all the ARBs in the study are currently under a lease or grower-ship contract. The study focuses on lease and growership contracts because of their prevalence among the officially listed AVAs that cultivate Cavendish bananas. Of these 61 AVAs, 29 out of 61 (45.9%) are under a lease contract, while 28 out of 61 (48%) are under growership arrangements.⁶

All the agribusiness partnerships in this study cultivate and export Cavendish bananas. The focus on one crop ensures that crop volatility, seasonal, and cost differences do not affect the differences between the respondents.⁷ Moreover, the Philippines is the third largest exporter of Cavendish bananas after India and China. Cavendish bananas are worth about \$884 million annually, or 14% of the country’s total agricultural exports. The total land area devoted to Cavendish banana cultivation in the country is 82,202 hectares, and the Davao region cultivates 46,681 (56.78%) of these. In the DAR’s official tally, AVAs that are devoted to the cultivation of Cavendish bananas account for 8,717 ha. Thus, the listed AVAs account for 18.7% of land area devoted to Cavendish banana cultivation in the region and 10.6% of land area devoted to Cavendish banana cultivation in the Philippines.⁸

Table 9.3 gives a summary of each group’s AVA and the size of the land area involved and the length of time that each contract is supposed to last. The shortest length of time for a lease contract is 25 years. The average age of an ARB is about 50 years old (Reyes 2002). Moreover, these contracts are renewable at the discretion of the lessee, not the lessor. Thus, the conditions of these contracts may persist up to the lifetimes of the ARBs’ heirs. Should the heirs want to

Table 9.3 A summary of current contracts with land area, length of time, and whether there are disputes surrounding the AVAs. “Y” indicates an ongoing dispute. Note that HIJO and TRAIN are owned by the same family.

Location	Type	Group	Total land area (ha)	Indiv. plot size (ha)	Year of CLOA	AVA year	Length (years)	AVA with former owner	AVA dispute
Santo Tomas	Grower	M1	47.52	1.02	2004	2007	10		
		M2	89.76	1.02	2004	2007	10		
		D	799.56	1.04	2002	2002	30 (renewable)	Y	
	Lessor (Group)	S1		1.04	2002	2002		Y	Y
		S2		1.04	2002	2002		Y	Y
Tagum		H	294.33	0.8	1997	2014	60	Y	
Pantukan	Lessor (Ind)	P	32.5 +	2.5 0.6	1992	2009	25 (renewable)		Y

Source: Rosete (2020).

undertake a different form of farming or crop, they can be blocked by the agribusiness firm. Of note are the last two columns. Under the column “AVA with former owner,” a Y means that the agribusiness partners are the former owners of the land before the implementation of CARP. In the last column, the Y indicates a disputed contract where the ARBs have taken some action to nullify their contracts or renegotiate the terms. In the municipality of Santo Tomas, Davao Del Norte, for example, the lessor groups have been in a partnership with the former owners of their land since they received their CLOA. Further, all disputed AVAs are currently under lease contracts.

Findings

In principle, all ARBs face the same institutional environment. Their AVAs are supposedly regulated by the DAR and monitored to ensure that they fulfill the objectives of CARP. Further, ARBs must also pay for amortization unless the former landowners freely release land for redistribution. Given these institutional factors common to all ARBs, group attributes may contribute more to determining the AVA contracts. The columns in Table 9.4 show the attributes that each ARB group had at the time of contracting.

The ARB interviewees from Santo Tomas, Davao Del Norte, were all members of a trade union that was friendly with the agribusiness firm that owned the banana plantation that they would receive under CARP. Though they had very similar starting points, grower groups M1 and M2 diverged from their counterparts in lessor groups D, S1, S2.

Key informant interviews suggest that groups M1 and M2 were marginalized members of the trade union. They were given more unpleasant jobs such as digging canals and forming hills for banana trees.⁹ They saw land reform as an opportunity to improve their situation. The leadership of the M groups contacted pro-agrarian reform NGOs who provided them with legal assistance and introduced them to other farmers who had entered agribusiness contracts. Through these contacts, they learned about the different types of AVAs. Eventually, the

Table 9.4 Conditions of each group at the time of negotiating and bargaining over current AVAs. “Y” means that the organization had these.

<i>Location</i>		<i>Group</i>	<i>AVA education</i>	<i>Member consultation</i>	<i>Ind. legal counsel</i>	<i>Org. debt</i>	<i>External advocates</i>
Santo Tomas	Growers	M1	Y	Y	Y	Y	Y
		M2	Y	Y	Y	Y	Y
		D					
	Lease (Group)	S1					
		S2					
Tagum		H	Y	Y	Y	Y	Y
Pantukan	Lease (Ind)	P					

Source: Rosete (2020).

leadership of M1 and M2 persuaded other farm workers to talk to the NGOs, who provided them with the same AVA education. To maintain their coalition of farm workers, they also formed methods of democratic voting, debate, and deliberation that allowed their members to deliberate and build consensus. In 2004, the ARBs of M1 and M2 began a growership agreement with their former employers. They eventually dissolved this agreement in 2007 when they found a new agribusiness buyer. Under this new agreement, the ARBs were able to sell a box of class A bananas for \$4.10. Of this, \$0.85 would go to the cooperative for maintenance, inputs, day-to-day operations, and remaining amortization payments, which amounted to 297,733.43 pesos per hectare.

Groups D, S1, and S2 initially belonged to a single lessor organization whose leadership also led the management-friendly trade union. According to key informant interviews from all three groups, the leadership was comfortable with the status quo and focused on convincing the farm workers that they should enter a lease contract with their current employers. The leadership framed the choice in the following way: if they follow their co-workers in M1 and M2, there will be little financing for operations, amortization payments would be very high, and they bear risks of bad harvests and pests. A lease contract will mean no amortization since their employers will simply transfer the land to them and continue wage payments and additional lease payments by virtue of their land ownership. The leadership of the management-friendly trade union succeeded. In 2002, the members of groups D, S1, and S2 decided to enter a lease contract with their former employers. The lease paid to the ARBs in this contract would rise with the number of boxes starting at \$0.07/box for 4,200 boxes or less and ending in \$0.11/box for 4,901 boxes or more. This amounts to a range of 13,679 pesos to 25,064 pesos (\$294 to \$539.11) annually. In addition, if they are employed by the agribusiness partner, they can receive a daily wage of 320 pesos, which is greater than the province's minimum wage at the time of fieldwork of 302 pesos.

Like groups M1 and M2, group H in Tagum City initially saw land reform as a means to improve their situation by owning their own banana farms. They organized their fellow farmworkers, found advocates and lawyers, and negotiated a growership contract. Unlike the M groups, however, their growership contracts were sold to another agribusiness firm, which imposed several conditions that added costs to the ARBs. First, the new buyers installed new irrigation pipes across the farm, which were then billed to the ARBs without being consulted. Second, the ARBs could only buy fertilizers and pesticides from the new buyers. These two conditions were well within the bounds of the contract since the ARBs gave up the ability to determine the methods of cultivation to allow the buyers to have quality control. Since the buyers were now able to exercise monopoly power over the ARBs, they raised the price of the fertilizer. ARBs found themselves in debt due to the high input prices and payments for the irrigation pipes.

Eventually, a typhoon hit the island of Mindanao in 2012, destroying group H's banana plants. The typhoon pushed the group to taking greater debt and closer to not being able to make their amortization payments. Due to these debts, they entered a lease agreement with the former owners of their lands. Under this lease contract, the ARBs would be paid a lease of 17,000 pesos annually in addition to a wage of 320 pesos daily. Group H, however, would retain the ability to hire workers and manage the day-to-day farm operations.

The ARBs of the P group from Compostela Valley were farm workers of a coconut plantation. They decided to continue as coconut farmers after receiving their CLOA in 1992. Eventually, the single buyer of coconuts in the district told them that the price of kopra had fallen from 20 pesos/kilo to 9 pesos/kilo. The lower prices stuck, and the ARBs found themselves unable to pay for their amortization and their daily needs. It was at this time that an agribusiness firm approached the individual ARBs to lease their lands and convert them into banana

plantations. The agribusiness partner was willing to pay a five-year advance and cover their missed amortization payments of 8,946.19 pesos annually.

Making their amortization payments and receiving a lump sum for five years of lease payments was tempting, as they were already in debt. The ARBs of the P group did not see the need for an organization, and thus did not build any capacity for collective action. Further, they did not seek out any legal assistance or assistance from external advocates. Their only knowledge of AVAs came from the lease contracts they were presented with individually. The agribusiness firm was able to convince a majority of the ARBs. In 2009, their agribusiness partner sold the lease to another firm without the consent of the ARBs. This new agribusiness partner kept the terms of the original contract. They paid a lease that would increase by 5% every five years.¹⁰ The agribusiness firm also had the choice to hire the ARBs for at least the minimum daily wage of 302 pesos.

Contracts and consequences

One benefit of land ownership and contracts with agribusiness partners can be seen in income. Consistently, individual interviewees cited this as the most important reason to own land. Table 9.5 compares the outcome between a lessor ARB in Santo Tomas and their grower counterparts.

The advantages of being growers, however, are visible if we compare incomes. Growers maintain the ability to determine some methods of cultivation. Even if they shoulder greater costs, growers can experiment on different practices and management techniques that can raise revenue. In Table 9.5, the bi-weekly income is based on an annual yield of 4,000 boxes.¹¹ It is clear from the table that the growers get a higher income despite shouldering the costs involved in production.¹² This is because growers are owner-cultivators who fully claim the revenue that their lands generate. Lessors, on the other hand, give a greater portion of the revenue to the lessee. However, the lease contract does not simply yield a larger share of the revenue to the agribusiness firm. It also yields greater control.

The contracts of each AVA are described in Table 9.6. The columns correspond to the abilities that ensure control over land. Y means that a group holds this ability under their current contract. From this table, it is evident that growership contracts allowed the ARBs

Table 9.5 A comparison of incomes between the Santo Tomas beneficiaries

<i>Lessor income</i> (4,000 class A boxes/year)	<i>Grower income</i> (4,000 class A boxes/year)
Wages (pesos): Daily: 320 Bi-weekly (pesos/12 days): 3,840 Exchange rate in 2015: 45.93 pesos/dollar Bi-weekly (USD): \$83.61	Revenue: Price/box: \$3.25 Bi-weekly average yield: 4,000/26 153.85 Total: \$615.40
Lease payment (BTF): BTF rate (USD): \$0.071/box BTF total (USD): \$284.00 BTF bi-weekly (USD): \$11.00	Costs: Bi-weekly (pesos): 9,646 Exchange rate in 2015: 45.93 pesos/ dollar Bi-weekly (USD): \$106.77
Bi-weekly income: \$94.61	Bi-weekly net income: \$508.63

Source: Author's fieldwork.

Table 9.6 The rights that each group is able to maintain in their current contracts. “Y” indicates that these rights are given to the beneficiaries. “C” means that they have these rights conditionally.

	<i>Location</i>	<i>Rights/group</i>	<i>Det. rem.</i>	<i>Withdraw</i>	<i>Det. methods</i>	<i>Det. user</i>
Growers	Santo Tomas	M1	Y	C	C	Y
		M2	Y	C	C	Y
		D	C			
Lease (Group)		S1				
		S2				
		Tagum	H	C		
Lease (Ind)	Pantukan	P				

Source: Rosete (2020).

to maintain most abilities over their holdings. Groups that had growership contracts (M1, M2, and, initially, H) developed significant bargaining power and enhanced their bargaining positions. All three groups learned about growerships through NGO contacts and exposure to other farms. By observing and meeting other growers, they learned how to finance their operations through pooling resources and specialized loan programs for cooperatives.¹³ They were also able to reach out to lawyers that helped ARBs understand intricacies of contracting and advocates that pressed the DAR to monitor bargaining process and ensure ARB interests. Finally, each group encouraged membership input into the bargaining process to ensure their consent to the contract. However, comparing the experience of M1 and M2 to that of H, growership contracts can have differences. H gave up their ability to determine the methods of cultivation on their lands and went into debt. This debt, coupled with the destruction of their banana farms by the typhoon, forced the ARBs of H to enter a lease contract.

It is evident that ARBs give up more abilities in a lease contract. The interviewees from all lessor groups suggest that they gave up control over land to alleviate burden of debt and amortization payments. The H group, however, was able to negotiate a lease contract where they maintain the right to negotiate the lease and wage and choose who can work on their lands. These were rights that other lessors in this study did not keep.

For groups D, S1, and S2, the actions of the trade union leaders undermined their bargaining position. The ARBs thought they had no other viable option due to the prospect of debt and the supposed lack of financing for growership operations. The leaders simply acquiesced to their former employer’s terms since they wanted to maintain the status quo. According to group interviews with members of D, S1, and S2, membership communication was limited to reporting the terms of their former employers and convincing members of the viability of a lease contract. Further, few, if any, efforts were made to expose the ARBs to other AVAs. This made the ARBs think that the only viable option for their lands was the lease contract offered by their former employers. Moreover, the interviewees did not recall any legal counsel assisting in the negotiations. With the union leadership simply acquiescing to the wishes of their former

employers for a lease contract, D, S1, and S2 did not develop any bargaining power. Since the groups did not develop bargaining-enhancing attributes, the ARBs entered contracts where they held no rights over their holdings.

In 2004, the ARBs of S1 and S2 decided to assert their land ownership. Members of these groups picketed the DAR for days. Their actions attracted other ARBs and, in 2010, they occupied their lands and attempted to break the lease contracts. Since they ceded the right to withdraw their holdings from the lease contract, their land occupation was deemed illegal. They were violently dispersed and at least one ARB was killed. Since they ceded the ability to determine the users of their land, they were retrenched by their agribusiness partner and are no longer able to work on their holdings.

Despite having an existing organization, the contracts of D, S1, and S2 were similar to that of P who were not organized at the time of contracting. Apart from their status as ARBs, members of the P group did not take measures to enhance their bargaining power. They were not organized and did not negotiate with the help of any outside advocacy or legal counsel. Facing debt because of low *kopra* prices, they hastily entered a lease contract without finding out about alternative AVA types. As a result, they held no control over their holdings.

Initially there was no conflict. The ARBs and their family members were able to work in the AVA. In 2009, the new agribusiness partner heard rumors that one of the ARBs in the P group had a daughter who was a member of a radical trade union. To prevent any type of labor resistance, the new agribusiness partner retrenched all the ARBs and their family members. They were given the reason that since their community has been “infiltrated” by trade unionists, they will inevitably cause problems. Since the AVA contracts gave the right to determine the user of land and withdrawal from the partnership to the agribusiness firm, they could not transfer the AVA, evict the agribusiness firm, or assert their right to work on their lands.

Dispossession

Dispossession results from the abilities that ARBs give up in their contracts with agribusiness firms. If AVAs are supposed to facilitate the objectives of CARP, then not only should ARBs see an appreciable rise in income, but they should also maintain control of their holdings. Groups S1, S2, and P were deprived of the ability to control or benefit from their land because they gave up the ability to select the users of their land and the ability to withdraw their lands from the partnerships.

There are two main reasons why these groups decided to give up these rights. First, the ARBs wanted to alleviate the burden of debt. The ARBs from group P almost lost their lands due to the low price of *kopra*. ARBs from S1 and S2 accepted the lease terms, initially, because they thought that the amortization payments would be insurmountable and that they would not be able to access any financing for growing bananas. Second, the ARBs entered lease contracts to avoid further debts that can arise from bearing the costs of inadequate harvests or diseases that may afflict the banana plants.¹⁴ In a lease agreement, the agribusiness partners would have had to shoulder these costs. All three groups, however, did not get to study different contractual forms before they negotiated AVA terms. They were not shown how pooled ARB resources and small loans would have provided financing for their operations and helped improve the chances of a growership’s success.

Since their agribusiness partners now hold the right to choose who works in the AVA, they were able to prevent the ARBs from working on their holdings. Interviewees from these groups survive through seasonal work in neighboring grower farms, laundry, tailoring, and construction. Some interviewees also used the initial lease payments to buy motorcycles, which they use

for delivery and transport jobs. All the interviewees say they would have preferred steady work in the lands that they own since that would be more stable.

While lease contracts result in ARBs giving up a significant subset of rights over their holdings, they do not necessarily lead to dispossession. The experience of group H demonstrates how bargaining power can compensate for a severely weakened bargaining position. They were able to maintain their ability to determine the users of their land by enlisting the help of NGOs and lawyers. These external advocates regularly visited the DAR office to pressure land reform officials to monitor the contracting process. Further, they helped the ARBs negotiate with the new agribusiness lessors for the ARBs' right to choose who can work on their lands. Due to this, they are able to secure employment and even train family members for work on the farm.

Though a lease contract saved the ARBs of group H from outright dispossession, it was a growership contract that had put them at risk. Giving up the ability to determine the methods of cultivation almost led to them losing their lands. Their agreement to buy inputs solely from their agribusiness partner when they had a growership gave the agribusiness firm the power to set input prices. This drove the ARBs into debt – a situation made worse by the typhoon.

The experiences of the lessor ARBs, then, show that dispossession does not depend on whether the ARBs had a lease or growership contract. Rather, dispossession in agribusiness contracts depends on the abilities that smallholders can retain over their lands. Both growership and lease contracts introduce some possibility of smallholders losing rights to their lands. Groups that develop bargaining-enhancing attributes are better able to avoid dispossession.

Discussion and policy implications

The experience of the ARBs shows that the conditions of contracting can have persistent effects on the degree to which smallholders can use their land to generate viable livelihoods. While agribusiness partnerships have the potential to raise income and productivity, the perceived costs and benefits of a contract can force smallholders to give up rights to their land, which preclude them from its use as a means of livelihood and leverage within a partnership. The perception of the costs and benefits of different contractual forms depends on their organizational history and the institutions governing the contracting process. Improving the opportunities of smallholders in agribusiness partnerships, then, entails interventions from both the state and civil society (Borras & Franco 2013).

One implication of the study is that agribusiness partnerships, by themselves, cannot alleviate the constraints that smallholders face. In the case of the lessor ARBs, these material constraints compelled them to give up a substantial degree of control to their agribusiness partners. In the context of negotiating contracts, these material constraints worsen the bargaining position of smallholders. If agribusiness partnerships are to result in viable livelihoods for smallholders, then policymakers have to raise their bargaining position by relieving some material constraints. In the context of the banana cultivators in my fieldwork, it may be wise to give subsidized loans for agricultural and capital inputs. Further, at least in the context of the Philippines, amortization payments have to be less stringent and, perhaps, reduced. The lessor ARBs in my fieldwork all have ceded rights to their land due to the burden of amortization payments. If AVAs are to generate viable livelihoods, then policymakers in the Philippines should re-examine the pricing of lands relative to the capacity of ARBs instead of the avowed valuation of the former owners. Further, the state should re-examine how it can finance amortization payments so as to alleviate the burden for ARBs.

In other contexts, relieving material constraints may also take the form of productive public goods such as farm-to-market roads and purchasing centers where farmers can sell their crops

at market price. Both of these measures can alleviate the costs of accessing markets that may compel farmers to rely on monopsonistic crop buyers, raising smallholders' bargaining positions. Roads also have the advantage of generating benefits for other members of the community by giving them access to centers of commerce, jobs, and schools.

Apart from material interventions, policymakers can also ensure that contracts are written so that smallholders maintain the rights to use their lands and withdraw them from adverse partnerships. The reason why the beneficiaries were dispossessed of their lands is that their agribusiness partners can veto their employment. If contracts can ensure that ARBs, like group H, have some capacity to manage and select workers, then they can maintain their employment and avoid dispossession. Admittedly, this may be difficult in the case of the Pantukan beneficiaries, as none of them have had experience in cultivating bananas. However, if the Pantukan beneficiaries were able to withdraw their lands from the agribusiness partnership, then they may be able to find more viable partners. Further, if withdrawing land from a partnership is a credible threat, agribusiness partners would have a greater incentive to ensure that smallholders receive better remuneration within the arrangement.

In 2016, a peasant leader named Rafael Mariano was appointed to head the DAR. While his tenure was short (June 30, 2016–September 6, 2017), the DAR made efforts to address the ongoing disputes of S1 and S2 with their agribusiness partner. The dispute had already reached the Presidential Agrarian Reform Council and was waiting adjudication for six years. All the contracts, including those with group D, were declared void and are now under renegotiation.¹⁵ Since Mariano was not approved by Congress, he stepped down and negotiations seem to have stalled. This experience illustrates the problematic nature of institutions governing agrarian reform and AVAs. The institutions should be robust to whoever takes a leadership position. If beneficiaries are dependent on the type of leadership that governs the DAR, then they may have to wait long periods to viably use their holdings. If the institutions instead had explicit rules to enhance beneficiary bargaining power and bargaining position, then they can deal with potential agribusiness partners without relying on the volatility that changes in the DAR leadership can create.

So far, I have only pointed out regulatory interventions. In my field study, organizations were instrumental in forming the opinions of beneficiaries regarding different contracts. Civil society can facilitate the formation of farmer and peasant organizations to raise their bargaining power vis-à-vis their agribusiness partners. They do not need to organize with forming agribusiness partnerships in mind. What we can learn from the experience of M1 and M2 is that civil society organizations can communicate opportunities to smallholders and facilitate their process of pooling resources, learning methods of management, and becoming familiar with the law.

Finally, both policymakers and civil society have to make interventions together in order to ensure the viability of agribusiness partnerships. Organized smallholders may opt for an unfavorable contract if their organizations do not provide adequate information. In this case, contractual regulations that allow smallholders to renegotiate and determine the users of their land would help them correct for the informational shortcomings. If material assistance is available, but civil society is absent to disseminate this information, smallholders might not be able to maximize opportunities offered by official channels.

The broad guidelines that I propose also benefit smallholders outside the context of agribusiness partnerships. Material interventions such as subsidized loans, farm-to-market roads, and purchasing centers can ease farmers' access to capital and markets regardless of the crops they choose to cultivate. Smallholder organizations can facilitate the creation of cooperatives that share resources and solve collective action problems, depending on the needs of their members.

Thus, ensuring the viability of agribusiness partnerships also means a more comprehensive rural development strategy involving material and institutional interventions by policymakers as well as empowering smallholders by civic organizations (Lahiff et al. 2007). In the end, the way to ensure that agribusiness partnerships are viable for smallholders may mean ensuring that individual farming is viable, even without agribusiness partners.

This study has some limitations, which present avenues for further research. First, one cannot draw generalizable conclusions due to the scope, sample size, and methodology. Instead, the study can inform future empirical and theoretical research on the possible political-economic conditions under which agribusiness partnerships succeed in improving the lives of smallholders. Second, while the study addresses agribusiness partnerships among ARBs, it does not account for counterfactual cases such as non-ARBs in agribusiness partnerships or ARBs that are not in agribusiness partnerships. Introducing ARB status as an additional dimension of variation would expand the possible institutional and legal factors that influence agribusiness partnerships. Finally, the study focuses on the ARBs' experiences and contains no information from their agribusiness partners apart from narratives from focus groups, key informants from ARB organizations, and DAR officials. However, once again, my research does not address the decision of what contracts to offer, but rather which contracts are accepted and why.

Conclusion

In this chapter, I argued that contracts between smallholders and agribusiness firms can be thought of as allocating abilities over land. Depending on the abilities allocated, a contract can result in denying the smallholder the benefits of owning land. That is, contracts can result in dispossession. Dispossession, in turn, depends on the strength of smallholders' bargaining power and bargaining position. I illustrate this dynamic using fieldwork conducted among agrarian reform beneficiaries in the Philippines. ARB groups that developed effective collective action mechanisms and support systems were able to keep more abilities over their holdings. Policies that seek to protect smallholders in contracting with agribusiness firms should ensure that smallholders are able to control who uses their lands and withdraw them from adverse contracts. Further, measures need to be taken to ensure that they are not contracting with weaker bargaining positions or bargaining power.

Notes

- 1 Arezki et al. (2013) empirically demonstrate that a significant driver in recent land acquisitions is the perceived weakness of property rights institutions in a country where agribusiness firms choose to locate. A reason behind this finding is that agribusiness firms may find it less costly to locate in countries where they can expropriate current land occupants.
- 2 A committee chaired by the head of the National Economic Development Authority (NEDA) that includes the DAR and the head of the Department of Agriculture. Its function is to streamline efforts by the national government agencies involved in rural development. Its creation is stated in the office of the president's Administrative Order number 34 (AO no. 34).
- 3 CARP accomplishments in 2009 were at 4,049,016.71 hectares and the country's total agricultural land is at 9.671 million hectares (IBON 2013).
- 4 All groups identified as cooperatives except for the group in Pantukan, which are beginning to form an association.
- 5 I made contact with the different groups with the help of the DAR *Unyon ng Manggagawa sa Agrikultura* (UMA) (Agricultural Workers' Union), and *Kilusang Mayo Uno* (May First Movement)-Southern Mindanao Region (KMU-SMR). Both the DAR and UMA provided lists of AVAs from which I selected the groups to contact. Members of KMU-SMR helped me make contacts with groups in Santo Tomas, Davao Del Norte, and Pantukan, Compostela Valley. The groups in Santo Tomas and in

- Pantukan gave me the names and addresses of their members, and I went door to door for individual interviews. The ARB group in Tagum city allowed me to interview their members after work hours in their office.
- 6 The figures here are based on a list of AVAs that I obtained from the DAR through an official request.
 - 7 There are a number of costs in cultivating Cavendish bananas. First, they are chemical- and fertilizer-intensive. Fertilizers can cost up to 990 pesos per 50 kg sack. Under typical growing methods, a hectare of banana uses up to three sacks of fertilizer every 20 days. The farmer must also treat the trees by applying chemicals to guard against fungi and other pests that may prevent the crop from meeting export standards. A typical grower pays for chemicals delivered through aerial spraying on a bi-weekly basis. The farmer must also buy twine for propping up the banana plants and plastic bags to wrap new bunches and protect them against insects. Finally, the farmer must also supply or pay for labor. Typically, the total bi-weekly cost of cultivating bananas is 9,646 pesos (\$210) per hectare. These costs were computed using pay receipts from grower ARBs and enumerating prices from agricultural stores around Santo Tomas.
 - 8 The figures quoted on total land area and export revenue were taken from estimates of the Philippine Statistics Authority <https://psa.gov.ph/fruits-crops-bulletin>.
 - 9 Canals and hills allow excess fertilizer and pesticides to wash away from the plants and need to be re-dug and re-formed. Interviewees report trouble breathing and eye pain when working in the canals.
 - 10 The lease amount was 22,000 as of fieldwork but increases 5% every five years. Net of the amortization payments amounts to 13,058.81. The duration of the contract is 25 years, renewable by the agribusiness firm.
 - 11 I chose this yield because it is at the lower end of the expected yield specified in the lease contracts governing groups D, S1, and S2 shown in Table 9.5.
 - 12 I calculated costs based on the typical yearly cycle of banana growing as narrated to me by managers of two of the grower groups whose members were interviewed. These include fertilizer, twine, aerial spray, and labor. I then obtained sample pay slips with redacted names from growers and crosschecked these with three nearby agricultural supply stores in Santo Tomas.
 - 13 Interviewees did not provide specifics on these but simply stated that they recall having been able to participate in these with information from their NGO contacts.
 - 14 Cavendish bananas are known to have little resistance to diseases caused by fungi like *Sigatoka*. Interviewees from groups H, M1, and M2 state that when a single plant contracts one of these fungal diseases, they would have to undergo a process of burning and chopping the trees to avoid the spread of the fungi. It can mean the loss of thousands of pesos for several months.
 - 15 The latest information from the DAR's news desk can be found in the following link: <https://www.dar.gov.ph/articles/news/100798>.

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