

# **Philippines-Australia Land Administration and Management Project**

## ***REVIEW OF LAWS, POLICIES AND INSTITUTIONAL SET-UP ON TENANCY IN THE PHILIPPINES***

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REPORT C47



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## ACRONYMS

ACPC	-	Agricultural Credit Policy Council
A & D	-	Alienable and Disposable
AFMA	-	Agriculture and Fishery Modernization Act
AO	-	Administrative Order
ARPT	-	Agrarian Reform Program Technologist
BLAD	-	Bureau of Land Acquisition and Distribution
CA	-	Compulsory Acquisition
CENRO	-	Community Environment and Natural Resources Office
CLOA	-	Certificates of Land Ownership Award
CLT	-	Certificate of Land Transfer
DA	-	Department of Agriculture
DANR	-	Department of Agriculture and Natural Resources
DAR	-	Department of Agrarian Reform
DARMO	-	Department of Agrarian Reform Municipal Office
DARPO	-	Department of Agrarian Reform Provincial Office
DENR	-	Department of Environment and Natural Resources
EP	-	Emancipation Patent
IEC	-	Information, Education & Communication
ISF	-	Integrated Social Forestry
LAD	-	Land Acquisition and Distribution
LAMP	-	Land Administration Management Project
LAO	-	Lands Administrative Order
LGUs	-	Local Government Units
LMB	-	Land Management Bureau
LMS	-	Land Management Services
LMO	-	Land Management Officer
LTDD	-	Land Tenure Development Division
MARO	-	Municipal Agrarian Reform Officer
MT	-	Metric Tons
NPAAAD	-	Network of Protected Areas for Agricultural and Agro-Industrial Development
NSO	-	National Statistics Office
PCA	-	Philippine Coconut Authority
PENRO	-	Provincial Environment and Natural Resources Office
PPDO	-	Provincial Planning and Development Office
RA	-	Republic Act
ROD	-	Register of Deeds
SAFDZ	-	Strategic Agriculture and Fisheries Development Zones
SAT	-	Systematic Adjudication Team
VOS	-	Voluntary Offer to Sell
VLT/DPS	-	Voluntary Land Transfer/ Direct Payment Scheme

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## REVIEW OF LAWS, POLICIES AND INSTITUTIONAL SET-UP ON TENANCY IN THE PHILIPPINES

### EXECUTIVE SUMMARY

The need to secure the rights of tenants in free patent areas is an imperative if the Land Administration and Management Program (LAMP) is to be true to its goals of alleviating poverty and enhancing the country's economic growth by improving security of land tenure and efficiency of land markets.

Agricultural tenancy is the physical possession by a person of land devoted to agriculture, belonging to or legally possessed by another for the purpose of production through the labor of the former and of the members of his immediate farm household in consideration of which the former agrees to share the harvest with the latter or to pay a price certain or ascertainable, whether in produce or in money, or both.

There are two systems of agricultural tenancy in the Philippines, to wit: 1) share tenancy and 2) leasehold tenancy. In the former, the produce is divided between the landholder and the tenant in proportion to their respective contributions. In the latter, the consideration is a fixed amount in money or in produce or in both. Share tenancy however has been declared contrary to public policy and abolished. The history of tenancy laws in the country is "a progression from one of election and limited operation to one of compulsion and comprehensive application." Thus, the state of the law on agricultural tenancy may be summarized as follows:

- The abolition of share tenancy now covers all agricultural landholdings without exception;
- Leasehold tenancy is no longer just an option but exists by operation of law; and
- Agricultural leasehold can be a preliminary step to land ownership. Hence, all share-crop tenants were automatically converted into agricultural lessees as of June 15, 1988 whether or not a leasehold agreement has been executed.

The DAR is mandated to determine and fix immediately the lease rental in tenanted lands under the retention limit and lands not yet acquired under the Comprehensive Agrarian Reform Law (RA 6657) in order to protect and improve the tenurial status of tenants therein.

As the principal agencies involved in CARP implementation, the DAR and the DENR have defined their respective jurisdictions over untitled private agricultural lands. The DENR shall issue free patent for the retained area of not more than five (5) hectares, except in cases of hereditary succession wherein each heir shall be entitled to 5-hectare retention, while the DAR shall issue Certificate of Land Ownership Award (CLOA) or Emancipation Patent (EP) for the excess area. However, for untitled A & D lands which could not qualify for free patents, whether tenanted or not, their disposition shall be under the jurisdiction of the DENR.

Free patent is a form of concession of public land suitable for agricultural purposes granted by the government through administrative confirmation of imperfect or incomplete title. The rule, as laid down by the Supreme Court, is that alienable public land held by a possessor or through his predecessor-in-interest, openly, continuously and exclusively for the prescribed statutory period (30 years under the Public Land Act) is converted to private property by the mere lapse of said period *ipso jure* (by operation of law). (Director of Lands vs. Intermediate Appellate Court, 146 SCRA 509 [1986])

The study has taken the view that the validity of free patents issued in favor of absentee-claimants does not depend on PD 152, which prohibited the employment or use of share tenants in public land applications, but on whether the tenant was employed before or after the lapse of the 30-year period required. If the tenant was employed before the lapse of the 30-year period, the patent is defective; however, if he or she was employed after the lapse thereof, the patent is valid. In the meantime, the free patents issued by LAMP to absentee-claimants enjoy the presumption of validity. The burden of proof is upon him or her who claims that there were irregularities or violations in issuing such patents.

The extent of agricultural tenancy in the LAMP prototype areas in Leyte is significant. The practice is prevalent in lands planted to coconuts and palay - 70 % for coconut lands and almost 50% for rice lands. The socio-demographic characteristics of the respondent tenants/ landowners are as follows:

- 26 out of 28 respondents or 93% have an average annual family income below that of the 1997 Eastern Visayan region average family income figure (₱67,772.00) as well as that of the 1997 national average family income (P123,168.00);
- The average family income of all of the 28 respondents fall below the 2000 national average family income of ₱144,039;
- 7 out of 28 respondents or 24% are below the 2000 national poverty threshold of ₱13,916.00;
- Overall, the male and female respondents are mostly within the age bracket 61-65 years old, followed by the age bracket 46-50 years old;
- The economically disadvantaged respondents have more dependents to support (3-4) compared with the economically well-off interviewees (1-2);
- Small-scale farming is the primary occupation of all respondents; and
- Coconut mono-culture and intercropping of palay and coconut are the prevalent forms of cropping patterns.

The tenancy profile shows the following important features:

- Share tenancy which is essentially unwritten has persisted as the main tenurial arrangement (57%); while leasehold tenancy appears merely as an alternative tenurial arrangement (43%);
- Tenurial arrangements were established by means of direct negotiation (21%); succession (36%); and DAR mediation (33%);
- Share tenancy in the form of 50-50 arrangement is prevalent in coconut production (58%); leasehold-fixed rental in the form of 75-25 arrangement is followed in palay production (42%);
- Almost 50% of the respondent tenants have borne their tenancy for 30 years or more;
- The landowners themselves are the principal recipients of the lease rentals or farm produce shares given by their tenants; and
- 89% of the tenants have not defaulted in delivering the landowner's share; 79% of the tenants have not sought the assistance of their landowners;
- 

As a local institution, it is evident that traditional agricultural tenancy has remained stable, in terms of perpetuating the essential landlord-peasant class relations, notwithstanding its perceived adverse socio-economic effects on a modernizing rural society.

Most tenants in the prototype areas viewed their relations with landowners as problematic (53%), while most landowners do not consider their relations with tenants as problematic (62%). The tenants cited as a major concern the lack of security of tenure; for landowners

it is the widespread practice of subleasing by tenants without their consent. Both parties are unanimous that :1) The tenancy relations should be formalized in writing through DAR's intervention; 2) The 75-25 sharing is acceptable for palay but not for coconut for which 50-50 sharing is preferred; and 3) Both parties should be made aware of their rights and obligations.

To ensure the security of tenants in free patent areas, short and long term measures are proposed. Short term measures are those which can be carried out within the framework of existing laws, while long term measures would require changes or amendments therein. The short-term measures include:

- Strict compliance by LAMP adjudicators with the requirement to ascertain **“whether the applicant used share tenants to cultivate the land”** before issuance of patent;
- Issue clarificatory/ supplemental guidelines on PD 152;
- Establish close coordination with DAR for the implementation of intensified leasehold operations in tenanted free patent areas;
- Facilitate turnover to DAR of areas in excess of five –hectare retention limit which are covered by free patent applications and are tenanted pursuant to Joint DAR-DENR Memorandum Circular No. 2003-01, Series of 2003, for distribution to tenant farmers;
- Undertake intensive information, education and communication (IEC) campaign on the rights and obligations of tenants and landowners; and
- Conduct baseline data gathering on tenancy situation at the community level prior to actual project implementation.

On the other hand, the long-term measures are:

- Disqualify free patent applicants who employed or used tenants before the lapse of the period required for occupation and cultivation to promote State policy favoring owner-cultivatorship of family size farms;
- Amend Section 3 of PD 152 to allow the acquisition and distribution under CARP of public land applications found to have violated PD 152 in favor of tenant farmers and other qualified beneficiaries; and
- Undertake policy review and analysis of Section 34 of RA 3844, which fixes the maximum amount of lease rental at 25% of the average normal harvest for three agricultural years after deducting allowable expenses, as it applies to coconut lands in order to come up with fair, equitable and effective arrangement between tenants and landowners.

## **I. NATURE AND SCOPE OF AGRICULTURAL TENANCY**

### **A. Definition of Agricultural Tenancy**

Agricultural tenancy is defined as “the physical possession by a person of land devoted to agriculture, belonging to or legally possessed by another for the purpose of production through the labor of the former and of the members of his immediate farm household in consideration of which the former agrees to share the harvest with the latter or to pay a price certain or ascertainable, whether in produce or in money, or both.” (RA 1199 [1954], sec. 3).

The Philippine Supreme Court, in the case of *Ge/os vs. CA*, 208 SCRA 608 (1992), held that agricultural tenancy “is not a purely factual relationship dependent on what the alleged

tenant does upon the land. It is also a legal relationship. The intent of the parties, the understanding when the farmer is installed, and as in this case, their written agreements, provided these are complied with and are not contrary to law, are even more important.” (pp. 612-613).

It may be constituted either orally or in writing, express or implied. (DAR AO 6 [2003], sec. 3.2).

## **B. Elements of Agricultural Tenancy**

The essential requisites of agricultural tenancy are as follows:

- The parties are the landholder and the tenant;
- The subject is agricultural land;
- There is consent by the landholder for the tenant to work on the land;
- The purpose is agricultural production;
- There is personal cultivation; and
- There is compensation in terms of payment of fixed amount in money or produce. (Carag vs. CA, 151 SCRA 44 [1987]; Gabriel vs. Pangilinan, 58 SCRA 590 [1974]; Oarde vs. CA, 280 SCRA 235 [1997]; Qua vs. CA, 198 SCRA 236 [1991]).

The Supreme Court likewise held that “(a)ll these requisites must concur in order to create a tenancy relationship between the parties. The absence of one does not make an occupant of a parcel of land, or a cultivator thereof, or a planter thereon, a *de jure* tenant. This is so because unless a person has established his status as a *de jure* tenant, he is not entitled to security of tenure nor is he covered by the Land Reform Program of the Government under existing tenancy laws.” (Caballes vs. DAR, 168 SCRA 247, 254 [1988]).

## **C. Systems of Agricultural Tenancy**

There are two systems of agricultural tenancy in the Philippines, to wit: 1) share tenancy and 2) leasehold tenancy.

Share tenancy exists whenever two persons agree on a joint undertaking for agricultural production wherein one party furnishes the land and the other his labor, with either or both contributing any one or several of the items of production, the tenant cultivating the land personally with the aid of labor available from members of his immediate farm household, and the produce thereof to be divided between the landholder and the tenant in proportion to their respective contributions. (RA 1199 [1954], sec.4).

Leasehold tenancy exists when a person who, either personally or with the aid of labor available from members of his immediate farm household undertakes to cultivate a piece of agricultural land susceptible of cultivation by a single person together with members of his immediate farm household, belonging to or legally possessed by another in consideration of a fixed amount in money or in produce or in both (RA 1199 [1954], sec. 4).

Share tenancy has been declared contrary to public policy and abolished. (RA 3844 [1963], sec. 4), while leasehold is the prevailing tenancy arrangement allowed under existing laws.

## D. Status of Agricultural Tenancy

### 1. Tenanted Lands

The 1991 Census of Agriculture of National Statistics Office (NSO) reported that there were 4,610,041 farms in the country. These farms cultivated a total of 9,974,871 ha. of lands nation-wide. The average farm area in 1991 was 2.2 ha. (Table 1)

**TABLE 1. Tenure Status of Philippine Farms (as of 1991)**

Status	Farms		Physical Areas		
	Number	% Share	Hectare	% Share	Ave. (Ha)
Owned <sup>1</sup>	1,999,979	43.4	4,855,059	48.7	2.4
Partly Owned <sup>2</sup>	1,522,516	33.0	3,226,083	32.3	2.1
Tenanted	681,469	14.8	1,284,179	12.9	1.9
Leased	116,174	2.5	252,689	2.5	2.2
Other Forms	289,903	6.3	356,861	3.6	1.2
<b>Total</b>	<b>4,610,041</b>	<b>100.0</b>	<b>9,974,871</b>	<b>100.0</b>	<b>2.2</b>

Source: 1991 Census of Agriculture, NSO

Tenanted farms numbered 681,469 which accounted for about 15% of the country's total number of farms. The total area of tenanted farms was 1,284,179 ha and this represented about 13% of the country's total cultivated area. Average area of a tenanted farm was 1.9 ha.

Leased farms numbered 116,174 (about 2.5% of the total number of farms). The total area of leased farms was 252,689 ha and this represented about 2.5% of the country's total cultivated area. Average area of leased farm was 2.2 ha.

By NSO definition<sup>3</sup>, tenanted farms refer to those under share tenancy, while leased farms are those under leasehold. Thus, if the areas of tenanted and leased farms are combined, the estimated expanse of lands under agricultural tenancy would add up to 1,536,868 ha or 15.5% of the country's total cultivated area.

The potential tenanted area in the country could be much larger if the tenanted parcels of partly owned farms were considered. Assuming that 50% of the total area of these partly owned farms were tenanted (that is about 1,613,041 ha), this would result into a much greater expanse of lands under agricultural tenancy at 3,149,909 ha. This would translate into nearly 32% of the country's total farm lands.

If assuming that 100% of the total area of these partly owned farms were tenanted (3,226,083 ha), this would result into a staggering aggregate of 4,762,951 ha of tenanted lands. This would come up to nearly 48% of the country's total farm lands

<sup>1</sup> Including owner like possessions such as CLT holders, lands to be inherited, etc.

<sup>2</sup> Partly owned means some parcels of the farm were fully owned and the others were either tenanted, etc.

<sup>3</sup> **Tenanted** refers to rented lands wherein the rental arrangement is in the form of share of produce or harvest. **Leased/ Rented** refers to an area cultivated by a lessee which belongs to or is legally possessed by another, the lessor. The rental payment is in the form of a fixed amount of either money, produce, or both. (NSO, 1991 Census of Agriculture, p. xvi).

## 2. Tenant Farmers

The DAR in 1985 estimated that 10 million persons made up the country's agricultural work force and categorized them into: owner-cultivators (1.5 million or 15%), farmers in public lands without titles (1.5 million or 15%), share/leasehold tenants (2 million or 20%); and farm workers and subsistence fisherfolk (5 million or 50 %).

In 2003, the DA's Agricultural Credit Policy Council (ACPC) estimated that the country's total number of farmers and fisherfolk declined to 6,230,000. The ACPC placed the farmers' current total number at 5,280,000 of which 4,800,000 (91%) were small farmers.

If the 20% proportion of share/ leasehold tenants in the DAR data is applied to the ACPC figures, there would have been 1,246,000 tenants farmers in 2003. (**Table 2**). The average size of a tenant household was five persons.

**TABLE 2. Estimated Number of Small Farmers and Fisherfolks, Philippines, 2003**

Indicator	2003 Estimates
Number of farmers & fisher folk	6,230,000
a. Farmers	5,280,000
b. Fisher folk	950,000
Number of small farmers & fisher folk	5,690,000
a. Farmers	4,800,000
b. Fisher folk	890,000

Source: DA, ACPC 2003

## II. POLICY, LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING AGRICULTURAL TENANCY

### B. Evolution & Direction of Tenancy Laws

The history of tenancy laws in the Philippines (**Annex "A"**) has been characterized as "a progression from one of election and limited operation to one of compulsion and comprehensive application." (DAR AO 6 [2003], Prefatory Statement).

The first major tenancy law passed on August 30, 1954 is Republic Act (RA) No. 1199, otherwise known as the "Agricultural Tenancy Act of the Philippines". Under this law, tenants have the right to choose a leasehold tenancy arrangement. (Sec. 14).

On August 8, 1963, however, RA 3844, also known as the "Agricultural Land Reform Code", declared agricultural tenancy as contrary to public policy and thereby abolished it (Sec. 4), except for certain landholdings such as fishponds, saltbeds, and lands principally planted to citrus, coconuts, cacao, coffee, durian, and other similar permanent trees at the time of the approval of the said Act (Sec. 35).

Subsequently, RA 6389, or the "Code of Agrarian Reforms of the Philippines", was enacted in 1971. Agricultural share tenancy was automatically converted to leasehold but the exemption granted for certain landholdings remained. With the passage of RA 6657,

the “Comprehensive Agrarian Reform Law of 1988”, this conclusions exemption was expressly repealed. (Sec. 76 ).

Thus, the significant conclusions that can be derived from the evolution of the law on agricultural tenancy are as follows:

- The abolition of share tenancy now covers all agricultural landholdings without exception;
- Leasehold tenancy is no longer just an option but exists by operation of law; and
- Agricultural leasehold can be a preliminary step to land ownership. Hence, all share-crop tenants were automatically converted into agricultural lessees as of June 15, 1988 whether or not a leasehold agreement has been executed.

The DAR is mandated to determine and fix immediately the lease rental in tenanted lands under the retention limit and lands not yet acquired under RA 6657 in accordance with Section 34 of RA No. 3844, as amended, in order to protect and improve the tenurial status of tenants therein. (RA 6657[1988], sec. 12). Consistent with its mandate, the DAR has codified, modified and amended on December 18, 2003 the rules and procedures governing leasehold implementation on tenanted agricultural lands under DAR Administrative Order No. 06, Series of 2003.

### **C. Basic Legal Concepts on Agricultural Tenancy**

#### **1. Distinguished from Civil Law Lease**

There are important differences between a leasehold tenancy and a civil law lease. The subject matter of leasehold tenancy is limited to agricultural land; that of civil law lease may either be rural or urban property. As to attention and cultivation, the law requires the leasehold tenant to personally attend to, and cultivate the agricultural land, whereas the civil law lessee need not personally cultivate or work the thing leased. As to purpose, the landholding in leasehold tenancy is devoted to agriculture, whereas in civil law lease, the purpose may be for any other lawful pursuits. As to the law that governs, the civil law lease is governed by the Civil Code, whereas leasehold tenancy is governed by special laws. (*Gabriel vs. Pangilinan*, 58 SCRA 590 [1974]).

#### **2. Security of Tenure**

Once a tenancy relationship is established, either verbally or in writing, expressly or impliedly, the tenant is entitled to security of tenure. (RA 1199, [1954], sec. 7). Security of tenure simply means that the tenant shall not be dispossessed of his holdings by the landholder except for cause and only after the same has been proved before, and the dispossession is authorized by, the court. (RA 1199 [1954], sec. 49).

Similarly, under RA 3844, the agricultural leasehold relation once established shall confer upon the agricultural lessee the right to continue working on the landholding until such leasehold relation is extinguished. The agricultural lessee shall be entitled to security of tenure on his landholding and cannot be ejected therefrom unless authorized by the Court for causes therein provided (RA 3844 [1963], sec. 7).

The constitutionality of the provisions under RA 1199 designed to guarantee security of tenure of agricultural tenants such as Section 9 (*Severance of Relations*), Section 50 (*Causes for Dispossession of Tenants*), and Section 49 (*Ejectment of Tenant*) have long

been settled by the Supreme Court. (Primero vs. Court of Industrial Relations, 101 Phil. 675 [1967]; Pineda vs. de Guzman, 21 SCRA 1450 [1967]).

Transfer of ownership or legal possession of land under agricultural tenancy does not affect the tenant's security of tenure. (Tanpingco vs. IAC, 207 SCRA 653 [1992]). The agricultural leasehold relation shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor. (RA 3844 [1963], sec. 10; RA 1199 [1954], sec.9).

### **3. Rights and Obligations of Agricultural Lessees and Lessors**

The rights and obligations of agricultural lessees and lessors are summarized in Sections 6 to 10 of DAR Administrative Order No. 06, Series 2003, as follows:

**SECTION 6. Rights of Agricultural Lessees.** It shall be the right of the agricultural lessee to:

- 6.1 Have possession and peaceful enjoyment of the land;
- 6.2 Manage and work on the land in a manner and method of cultivation and harvest which conform to the proven farm practices;
- 6.3 Mechanize all or any phase of his farm work;
- 6.4 Deal with millers and processors and attend to the issuance of quedans and warehouse receipts of the produce due him / her;
- 6.5 Continue the exclusive possession and enjoyment of any homelot he may have occupied upon the effectivity of R.A. No. 3844, which shall be considered as included in the leasehold;
- 6.6 Be indemnified for the cost and expenses incurred in the cultivation, planting or harvesting and other expenses incidental to the improvement of his crop in case he surrenders or abandons his landholding for just cause or is ejected therefrom. In addition, he has the right to be indemnified for one-half of the necessary and useful improvements made by him on the landholding. *Provided*, That these improvements are tangible and have not yet lost their utility at the time of surrender and/or abandonment of the landholding, at which time their value shall be determined for the purpose of the indemnity for improvements;
- 6.7 Terminate the leasehold during the agricultural year for any of the following causes:
  - 6.7.1 Cruel, inhuman or offensive, treatment of the agricultural lessee or any member of his immediate farm household by the agricultural lessor or his representative with the knowledge and consent of the lessor;
  - 6.7.2 Non-compliance on the part of the agricultural lessor with any of the obligations imposed upon him by the provisions of R.A. No. 3844 or by his contact with the agricultural lessee;
  - 6.7.3 Compulsion of the agricultural lessee or any member of his immediate farm household by the agricultural lessor to do any work or render any

service not in any way connected with farm work or even without compulsion if no compensation is paid;

- 6.7.4 Commission of a crime by the agricultural lessor or his representative against the agricultural lessee or any member of his immediate farm household; or
- 6.7.5 Voluntary surrender due to circumstances more advantageous to him and his family.

**SECTION 7. Obligations of Agricultural Lessees.** It shall be the obligation of the agricultural lessee to:

- 7.1 Cultivate and take care of the farm, growing crops, and other improvements of the landholding as a good father of a family and perform all the work therein in accordance with proven farm practices;
- 7.2 Inform the agricultural lessor within a reasonable time of any trespass committed by third person upon the farm, without prejudice to his direct action against the trespasser;
- 7.3 Take reasonable care of the work animals and farm implements delivered to him by the agricultural lessor and see that they are not used for purposes other than those intended or used by another without the knowledge and consent of the of the agricultural lessor: *Provided*, however, That if said work animals get lost or die, or said farm implements get lost or are destroyed, through the negligence of the agricultural lessee, he shall be held responsible and made answerable therefore to the extent of the value of the work animals and/ or farm implements at the time of the loss, death or destruction;
- 7.4 Keep his farm and growing crops attended to during the work season. In case of unjustified abandonment or neglect of his farm, any or all of his expected produce may, upon order of the Court, be forfeited in favor of the agricultural lessor to the extent of the damage caused thereby;
- 7.5 Notify the agricultural lessor at least three days before the date of harvesting or, whenever applicable, of threshing; and
- 7.6 Pay the lease rental to the agricultural lessor when it falls due.

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**SECTION 9. Rights of Agricultural Lessors.** It shall be the right of the agricultural lessor to:

- 9.1 Inspect and observe the extent of compliance with the terms and conditions of their contract and the provisions of this Chapter;
- 9.2 Propose a change in the use of the landholding to other agricultural purposes, or in the kind of crops to be planted. *Provided*, That in case of disagreement as to the proposed change, the same shall be settled by the Court according to the best interest of the parties concerned: *Provided*, further, That in no case shall an agricultural lessee be ejected as a consequence of the conversion of the land to some other agricultural purpose or because of a change in the crop to be planted;

- 9.3 Require the agricultural lessee, taking into consideration his financial capacity and the credit facilities available to him, to adopt in his farm proven farm practices necessary to the conservation of the land, improvement of its fertility and increase of its productivity. *Provided*, That in case of disagreement as to what proven farm practice the lessee shall adopt, the same shall be settled by the Adjudicator or PARO according to the best interest of the parties concerned; and
- 9.4 Mortgage expected rentals.

**SECTION 10. *Obligations of Agricultural Lessors.*** It shall be the obligation of the agricultural lessor to:

- 10.1 Keep the agricultural lessee in peaceful possession and cultivation of his landholding; and
- 10.2 Keep intact such permanent useful improvements existing on the landholding at the start of the leasehold relation as irrigation and drainage system and marketing allotments, which in the case of sugar quotas shall refer both to domestic and export quotas, provisions of existing laws to the contrary notwithstanding.

#### **4. *Prohibitions on Agricultural Lessees and Lessors***

DAR Administrative Order No. 06, Series 2003, likewise provides in Sections 8 and 11 thereof for certain prohibitions against agricultural lessees and lessors, to wit:

**SECTION 8. *Prohibitions on Agricultural Lessees.*** It shall be unlawful for the agricultural lessee to:

- 8.1 Contract to work additional landholdings belonging to a different agricultural lessor or to acquire and personally cultivate an economic family-size farm, without the knowledge and consent of the agricultural lessor with whom he had entered first into leasehold, if the first landholding is of sufficient size to make him and the members of his immediate farm household fully occupied in its cultivation; or
- 8.2 Employ a sub-lease on his landholding: *Provided, however*, That in case of illness or temporary incapacity, he may employ laborers whose services on his landholding shall be on his account.

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**SECTION 11. *Prohibitions on Agricultural Lessors.*** It shall be unlawful for the agricultural lessor to:

- 11.1 Dispossess the agricultural lessee of his landholding except upon authorization by the DARAB. Should the agricultural lessee be dispossessed by his landholding without authorization from the DARAB, the agricultural lessor shall be liable for damages suffered by the agricultural lessee in addition to the fine or imprisonment prescribed in R.A. No. 3844 for unauthorized dispossession;
- 11.2 Require the agricultural lessee to assume, directly or indirectly, the payment of the taxes or part thereof levied by the government on the landholding;

- 11.3 Require the agricultural lessee to assume, directly or indirectly, any part of the rent, "canon" or other consideration which the agricultural lessor is under obligation to pay to third persons for the use of the land;
- 11.4 Deal with millers or processors without written authorization of the lessee in cases where the crop has to be sold in processed form before payment of the rental; or
- 11.5 Discourage, directly or indirectly, the formation, maintenance or growth of unions or organizations of agricultural lessees in his landholding, or to initiate, dominate, assist or interfere in the formation or administration of any such union or organization.

## **5. Termination of Tenancy Relations**

Tenancy may be terminated upon any of the grounds enumerated under Section 26 of DAR Administrative Order No. 06, Series 2003, as follows:

### **SECTION 26. Grounds for Extinguishing Leasehold Agreements.**

- 26.1 Abandonment by lessee without the lessor's knowledge.
- 26.2 Voluntary surrender of the landholding after giving notice to the lessor three (3) months in advance.
- 26.3 Lessee has no successor, pursuant to Section 9 of R.A. No. 3844, as amended, in the event he dies or becomes permanently incapacitated.
- 26.4 Leasehold relation shall likewise be extinguished when the lessee's dispossession has been authorized by the court in a judgment that is final and executory on grounds provided by law (R.A. No. 3844, Section 36, opening paragraph.)

## **6. Dispossession of Tenants**

Under Section 36 of RA 3844, as amended by Section 7 of RA 6389, the tenants may be validly dispossessed on the following grounds:

- (1) The landholding is declared by the department head [i.e., DAR] xxx to be suited for residential, commercial, industrial or some other urban purposes: *Provided*, That the agricultural lessee shall be entitled to disturbance compensation is equivalent to five times the average of the gross harvests on his landholding during the last five preceding calendar years;
- (2) The agricultural lessee failed to substantially comply with any of the terms and conditions of the contract or any provisions of the Code unless the failure is caused by a fortuitous event or *force majeure*;
- (3) The agricultural lessee planted crops or used the landholding for a purpose other than what has been previously agreed upon; (*Note*: Under DAR AO 6 (2003), the lessee is now allowed to diversify and/or plant auxiliary crops after the rental has been fixed, provided the lessee shoulders the expenses. [Sec. 3.7]);
- (4) The agricultural lessee failed to adopt proven farm practices [necessary to the conservation of the land, improvement of its fertility, and increase of its

productivity taking into consideration his financial capacity and credit facilities available to him];

- (5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee ;
- (6) The agricultural lessee does not pay the lease rental when it falls due : Provided, That if the non-payment of the rental is due to crop failure to the extent of seventy five *per centum* as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or<sup>4</sup>;
- (7) The lessee employed a sub-lessee on his landholding xxx;

Penalties are provided for unauthorized ejectment of agricultural lessees. A lessor who ejects his tenant without the court's authorization shall be liable under Section 36 (1) of RA 3844, as amended, for: a) fine or imprisonment; b) damages suffered by the agricultural lessee in addition to the fine or imprisonment for unauthorized dispossession; c) payment of attorney's fees incurred by the lessee; and d) reinstatement of the lessee.

## **7. Determination of Lease Rentals**

### Ricelands

The consideration for the lease of riceland and lands devoted to other crops shall not be more than the equivalent of twenty-five percent (25%) of the average normal harvest during the three (3) agricultural years immediately preceding the date the leasehold was established after deducting the amount used for seeds and the cost of harvesting, threshing, loading, hauling and processing, whichever are applicable (R.A. No. 3844, Section 34, 1st clause).

If the land has been cultivated for a period of less than three (3) years, the initial consideration shall be based on the average normal harvest during the preceding years when the land was actually cultivated, or on the harvest of the first year in the case of newly cultivated lands, if that harvest is normal (R.A. No. 3844, Section 34, 1st proviso). After the lapse of the first three (3) normal harvests, the final consideration shall be based on the average normal harvest during these three (3) preceding agricultural years (R.A. No. 3844, Section 34, 2nd proviso).

Normal harvest is the usual or regular produce obtained from the land when usage or officially recommended by the Department of Agriculture (R.A. No. 3844, Section 166(11)). Agricultural year is defined as the period of time required for raising a particular agricultural product, including the preparation of the land, sowing, planting and harvesting of crops and, whenever applicable, threshing of said crops: *Provided*, That in case of crops yielding more than one harvest from planting, "agricultural year" shall be the period from the preparation of the land to the first harvest and thereafter, from harvest to harvest. In both cases, the period may be shorter or longer than a calendar year (R.A. No. 3844, Section 166 [4]).

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<sup>4</sup> In the case of *Garchitorea vs. Panganiban*, 6 SCRA 338 (1962), it was held that when non-payment of lease rentals occurs for several years, said omission has the effect of depriving the landowner of the enjoyment of the possession and use of the land.

The lease rental shall cover the whole farmholding attended to by the lessee. Computation of lease rental shall include both principal and auxiliary crops in the area existing as of the time the leasehold was established. Auxiliary crop is any product raised other than the crop to which the cultivation of the land is principally devoted in each agricultural year, and excluding the produce of the homelot (R.A. No. 2263, Section 2 (5) (r)). In the absence of any agreement between the parties as to the rental, the maximum allowed herein shall apply (R.A. No. 3844, Section 34, 3rd proviso).

#### Coconut Lands

The lease rental for coconut lands shall not be more than twenty-five percent (25%) of the average normal harvest for a specific area for the preceding three (3) calendar years less the value of production cost. (DAR AO 06 [2003], sec. 5.4).

The application of the allowable deductible items in coconut shall depend on the final product, to wit:

- a) If the final product is copra, the deductible items are the following:
  - (i) Cost of harvesting which shall include picking and piling; and
  - (ii) Cost of processing which shall include husking, splitting, scooping, and drying.
- b) If the final product is green nuts, the deductible items above shall be used except for the cost of processing.
- c) If the final product is husked nuts, the cost harvesting and the cost of husking shall be deducted. (*Id.*, sec. 5.3)

In case there is large-scale replanting in the coconut area initiated by the lessor which may affect the normal coconut production in particular and the leasehold arrangement in general, a new lease rental may be computed proportionate to the decrease in production. (*Id.*, sec.5.5)

#### Sugarcane Lands

The lease rental for sugarcane lands shall be not more than twenty five percent (25%) of the average normal harvest less the value of the cost for seeds/cane points, harvesting (cutting), loading, hauling and/or trucking fee, and cost of processing pursuant to Section 34 of R.A. No. 3844.

The determination of the average normal harvest to be used in computing the lease rental in sugarcane lands shall be based on the following:

- a) If the leasehold relationship existed before 15 June 1988, the effectivity of R.A. No. 6657, the average normal harvests of the three (3) agricultural years immediately before the date the leasehold relationship was established shall be used.
- b) If the leasehold relationship was established on 16 June 1988 by operation of R.A. No. 6657, the average normal harvest of the three (3) agricultural years immediately preceding the said date shall be used.

- c) If the land has been cultivated for less than three (3) years prior to the date the leasehold was established, the estimated normal harvest during the three (3) agricultural years immediately preceding the said date shall be considered as the normal harvest. (DAR AO 06 [2003], sec. 4.3).

An agricultural year for sugarcane shall be understood to mean the period from land preparation to harvesting. Ratooning (from trash burning to harvesting) shall likewise be considered as one agricultural year. (DAR AO 06 [2003], sec. 4.4). The leasehold agreement shall include both the sugarcane products (sugar) and by-products (molasses). (*Id.*, sec. 4.5)

The lease rental of the land shall be paid in an amount certain, in money or in produce, or both, as may be agreed upon by the parties. Such rental shall be paid after the exact produce shall have been determined using the Certificate of Quedan and molasses storage certificate issued by the sugar central/miller, unless otherwise agreed upon by the parties under reasonable terms and conditions. (*Id.*, sec. 4.6)

### **C. Agencies Involved and Their Responsibilities**

#### **1. Department of Agrarian Reform (DAR)**

The promotion of agrarian reform is enshrined in the 1987 Philippine Constitutions, under Art. II (Declaration of Principles and State Policies), Sec. 21; Art XII (National Economy and Patrimony, Sec. 1, par 2; and Art. XIII “Agrarian and Natural Resources Reform” Sec. 4, 5, 6 and 8 respectively.

The Department of Agrarian Reform (DAR) is the primary government agency tasked to carry out the Comprehensive Agrarian Reform Program (CARP). Basically, it involves Land Acquisition and Distribution (LAD) Program, that is a land transfer activity and Leasehold Operation that is a non-land transfer activity.

To carry out its mandate, the DAR employs its full organizational complement of central, regional, provincial and municipal offices. At the municipal level, the Municipal Agrarian Reform Officer (MARO) is the focal person responsible for CARP implementation, as well as leasehold operation. Where and when the numbers of regular personnel are adequate, the MARO is assisted by a field team composed of an Agrarian Reform Program Technologist (ARPT), a District Facilitator and a Para-Legal Officer.

#### **2. Department of Environment and Natural Resources (DENR)**

The Department of Environment and Natural Resources (DENR) is the primary government agency that exercises jurisdiction over all lands of the public domain. It is responsible for the administrative confirmation of imperfect or incomplete title to lands of the public domain through the issuance of free patents.

The DENR performs land administration functions through the Land Management Bureau (LMB) and the DENR field offices, i.e., Regional Office, Provincial Environment and Natural Resources Office (PENRO), and Community Environment and Natural Resources Office (CENRO).

The LMB exercises staff functions while the DENR field offices perform line functions. As a staff bureau, the LMB is tasked primarily to a) recommend policies and programs; b)

advise the Secretary and the Regional Offices; c) monitor and evaluate land surveys, management and disposition; and d) issue standards, guidelines and procedures on land use and development. (EO 192 [1987], sec.14).

The DENR field offices, on the other hand, through their respective Land Management Services (LMS), are responsible for actual conduct of a) land surveys; b) land disposition and appraisal; c) investigation and adjudication of land cases; and d) land records management. These functions and responsibilities cut across the regional, provincial and community offices differing only on the levels of authority. (DENR Administrative Order [DAO] 38 [1990]).

### **3. Department of Agriculture (DA)**

The Department of Agriculture (DA) is the primary government agency responsible for the management and development of all agricultural lands in the country, as well as for the provision of support services to farmers. The DA also certifies on the eligibility of agricultural lands for conversion to non-agricultural purposes.

Although the DA is not involved in the actual land acquisition and distribution (LAD), as in the cases of the DAR and DENR, the agency plays a strategic role in defining CARP's viability and success.

This is underscored by the enactment and implementation of RA 8435, otherwise known as the "Agriculture and Fishery Modernization Act (AFMA)" in 1997. The backbone of AFMA's implementation is the Strategic Agriculture and Fisheries Development Zones (SAFDZ) approach that identifies and delineates land areas according to their best and appropriate uses. All SAFDZ areas are classified as "prime agricultural areas" that are identified and selected from the Network of Protected Areas for Agriculture and Agro-Industrial Development (NPAAAD). One of the four criteria for the SAFDZ identification is the dominant presence of agrarian reform communities and/or small owner cultivators and amortizing/agrarian reform beneficiaries and other small farmers and fisherfolk in the area.

### **4. Philippine Coconut Authority (PCA)**

Philippine Coconut Authority (PCA) is the government institution mandated to promote the rapid integrated development and growth of the coconut industry and other palm oil industry in all its aspects, and to ensure that the coconut farmers become direct participants in and beneficiaries of such development and growth.

The PCA collaborates with the DAR through an Agricultural Leasehold Improvement Program that aims to place under improved tenurial arrangement at least 100,000 hectares of coconut farms. In a Memorandum of Understanding dated May 19, 2003, the PCA and the DAR agreed to implement the joint program *Buwisan sa Niyugan Tungo sa Kaunlaran* to fast-track leasehold operation in coconut lands and to provide technical assistance, farm income improvement, and capability-building activities for coconut tenant-tillers and agrarian reform beneficiaries.

## **5. Local Government Units (LGUs)**

The Local Government Code of 1991 (RA 7160) transferred certain powers or authorities from the national government to the local government units (LGUs). Devolution had direct consequences on the rural sector such as the provisions on land reclassification, basic services delivery and people's participation on CARP implementation.

In particular, the authority of LGUs to reclassify agricultural lands has a direct impact on the security of tenure of tenant farmers. The reclassification of tenanted lands to residential, commercial, industrial or other non-agricultural uses could lead to or has resulted in the dispossession of tenant farmers.

Cities or municipalities are authorized, through an ordinance, and subject to certain limitations, to reclassify agricultural lands 1) when the land ceases to be economically feasible and sound for agricultural purposes, or 2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes. They are, likewise, authorized to prepare their respective comprehensive land use plans enacted through zoning ordinance which shall be the primary and dominant bases for the future use of land resources in their respective localities. (RA 7160 [1991], sec. 20). These reclassification and zoning ordinances require the approval of the provincial *sanggunian*.

### **D. The Comprehensive Agrarian Reform Program (CARP)**

The Comprehensive Agrarian Reform Program (CARP) is the main instrument of achieving equitable distribution and ownership of land in the country. Under Republic Act No. 6657, CARP "cover(s), regardless of tenurial arrangement and commodity produced, all public and private agricultural lands" (Sec. 4), specifically, "all A&D lands of the public domain devoted to or suitable for agriculture". (Sec 4[a], RA 6657). Private agricultural lands include "all private lands whether titled or untitled" (DOJ Opinion No. 176 [1992]). CARP thus covers tenanted and untenanted lands.

The DAR is principally mandated to implement CARP. It is authorized, among others, to acquire private agricultural lands for distribution to qualified beneficiaries upon payment of just compensation and to administer and distribute cultivable portions of A & D lands transferred to it by the DENR. (RA 6657 [1988], sec. 4 & 5). Besides the DAR, the DENR also plays a crucial role in the implementation of CARP. The DAR focuses on private agricultural lands and government-owned lands transferred by other agencies, while the DENR on public agricultural lands for distribution to beneficiaries.

The total CARP scope or target for land distribution is 8.1 million hectares. The DAR scope is 4.3 million hectares (53%), while for the DENR, 3.8 million hectares (47%). However, the DENR scope includes ISF (integrated social forestry) areas of 1.3 million hectares, which are actually found within forestlands or non-A&D lands. Thus, in terms of A&D lands, the DENR scope under CARP consists of 2.5 million hectares (31%). The breakdown of the CARP scope is shown in **Table 3**.

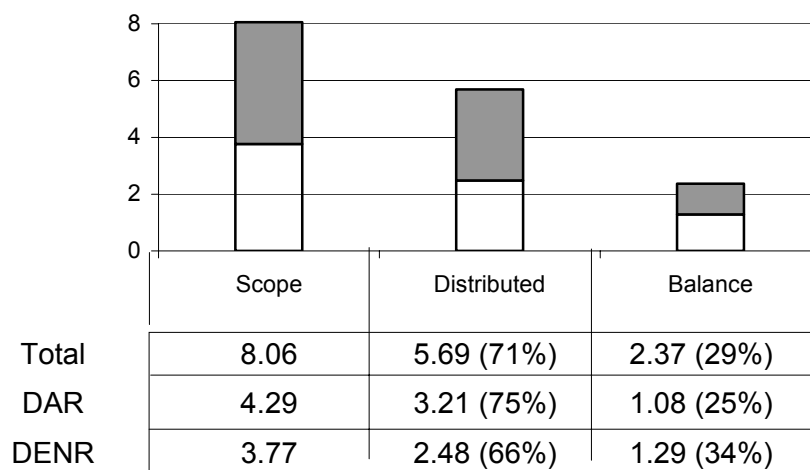
**TABLE 3. Scope of the Comprehensive Agrarian Reform Program (December 2001)**

LAND TYPE	SCOPE	
	(ha)	%
<b>I. DAR</b>	<b>4,290,453</b>	<b>53.22</b>
<b>II. DENR</b>	<b>3,771,411</b>	<b>46.78</b>
A & D LANDS	2,502,000	31.04
ISF	1,269,411	15.74
<b>TOTAL</b>	<b>8,061,864</b>	<b>100.00</b>

Source: Department of Agrarian Reform

As of December 2001, 5.69 million hectares (71%) have been distributed leaving a balance of 2.37 million hectares (29%) of the CARP scope. Of the 5.69 million hectares, the DAR distributed 3.21 million hectares (56%) while the DENR accomplished 2.48 million hectares (44%). Of the balance of 2.37 million hectares, the DAR's share is 1.08 million hectares (46%) while the DENR's, 1.29 million hectares or 54% of its scope. Thus, while the DENR has a smaller share of the CARP scope compared to DAR, its remaining backlog is bigger than that of the DAR. Compared with their respective scopes, the DAR accomplished 76% while the DENR 66%. The total accomplishments and balances are shown in **Figure 1**.

**FIGURE 1. Land Distribution Scope, Accomplishment and Balance, 1972-2001 (in million hectares)**



Source: Department of Agrarian Reform

## **1. Modes of Land Acquisition and Distribution**

There are essentially three modes of acquiring and distributing lands under RA 6657. These are as follows:

### **a) Voluntary Offer to Sell (VOS)**

Under this scheme, landowners voluntarily offer their agricultural land for coverage regardless of the phases of implementation for CARP prescribed under RA 6657. Landowners who voluntarily offer their lands for sale shall be entitled to an additional five percent (5%) cash payment. This incentive, however, is not available for banks and financial institutions. (RA 6657, sec. 19).

A landholding voluntarily offered for sale is not automatically accepted by DAR. It may be rejected if it is not suitable for agriculture or with slope of more than 18% slope and undeveloped. It may also be refused if there are no persons willing to be the beneficiaries thereof, or if the identified ARBs are the qualified children of the landowner. (DAR AO 6[1997]).

### **b) Voluntary Land Transfer/ Direct Payment Scheme (VLT/ DPS)**

In VLT/ DPS, the landowners enter into a voluntary arrangement for direct transfer of their lands to qualified beneficiaries.(RA 6657, sec. 20). The terms and conditions of such transfer shall not be less favorable to the transferee than those of the government's standing offer to purchase from the landowner and to resell to the beneficiaries, if such offers have been made and are fully known to both parties. (Sec. 20[b]).

Direct payment in cash or in kind may be made by the farmer beneficiary to the landowners under terms to be mutually agreed upon by both parties, which shall be binding upon them, upon registration with and approval by the DAR. Said approval shall be considered given, unless notice of disapproval is received by the farmer-beneficiary within 30 days from the date of registration. In the event they cannot agree on the price of land, the procedure for compulsory acquisition as provided in Section 16 shall apply.

The LBP shall extend financing to the beneficiaries for purposes of acquiring the land. (Sec. 21). Not all private agricultural lands, however, may be subject of VLT/DPS, such as those mortgaged with banking and/ or financial institutions.

### **c) Compulsory Acquisition (CA)**

In compulsory acquisition, the land is expropriated by the State in accordance with the procedures prescribed under Section 16 of RA 6657. Briefly, these procedures are as follows:

- Issuance of notice to acquire with offer to pay the corresponding value of the land;
- Acceptance or rejection of offer by landowner;
- In case of acceptance, payment by LBP of purchase price upon execution of deed of transfer and surrender of title by landowner in favor of the Government;
- In case of rejection, summary administrative proceedings to determine just compensation;
- Upon receipt by landowner of payment or, upon deposit of compensation in case of rejection or no response from landowner, immediate possession of land by DAR,

issuance of title in the name of the Republic of the Philippines, and distribution to qualified beneficiaries; and

- In case of disagreement, final determination of just compensation by court.

The procedures require that even before the notice to acquire is issued, the preliminary steps such as identification of the land, landowners and beneficiaries, ocular inspections and technical surveys, and valuation have already been undertaken. (Sec. 16 [a] to [f]).

Beneficiaries shall be awarded an area not exceeding three (3) hectares each. (Sec. 23 & 25). Landowners, however, are entitled to retention of not more than five (5) hectares. Children of landowners who are at least fifteen (15) years of age at the time of effectivity of RA 6657 on June 15, 1988 and who are actually tilling the land or directly managing the farm may be awarded three (3) hectares each. (Sec. 6). Beneficiaries are issued Certificates of Land Ownership Award (CLOA) as evidence of ownership of the land awarded them. (Sec. 25).

Lands acquired under RA 6657 may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries for a period of ten (10) years. (Sec. 27).

Payment by the beneficiaries shall be made to the LBP in thirty (30) annual amortizations at six per cent (6%) interest per annum. The LBP shall have a lien by way of mortgage on the land, and this mortgage may be foreclosed for non-payment of an aggregate of three (3) annual amortizations. (Sec. 26).

## ***2. Jurisdiction Over Untitled Private Agricultural Lands: DENR-DAR Complementation***

The issue of which agency has jurisdiction over “untitled private agricultural lands” in regard to CARP implementation has long been a bone of contention between DAR and DENR. Simply described, “untitled private agricultural lands” are portions of the public domain eligible for administrative or judicial confirmation of imperfect title under the law. In short, these lands would qualify for issuance of free patent or judicial patent.

The DAR and the DENR have over the years attempted to clarify their respective jurisdictions over the disposition of untitled privately-claimed agricultural lands with varying degrees of success. These attempts are reflected in Joint DAR-DENR Memorandum Circular No. 14, Series of 1997, Joint DAR-DENR Memorandum Circular No. 19, Series of 1997, and Joint DAR-DENR Memorandum Circular No. 2003-01, Series of 2003. The latter is essentially a restatement of the policies and procedures embodied in the first two joint circulars. It was made necessary after the then DENR Secretary Antonio H. Cerilles issued DENR Memorandum Circular No. 99-22 on August 4, 1999 directing all Regional Executive Directors “to strictly exercise jurisdiction over all Alienable and Disposable lands of the public domain xxx and prepare the same for disposition to qualified and legitimate recipients under the Peoples’ Alliance for the Rehabilitation of Environment of the Office of the Secretary”, thereby effectively preventing the turnover of the remaining untitled A & D lands for CARP coverage.

The jurisdictions of DENR and DAR over untitled A & D lands in relation to CARP have been delineated under Joint DAR-DENR Memorandum Circular No. 14, Series of 1997. The DENR shall issue free patent for the retained area of not more than five (5) hectares, except in cases of hereditary succession wherein each heir shall be entitled to 5-hectare retention, and the DAR shall issue Certificate of Land Ownership Award (CLOA) or Emancipation Patent (EP) for the excess area. However, for untitled A & D lands which

could not qualify for free patents, whether tenanted or not, their disposition shall be under the jurisdiction of the DENR (Part III [A] to [C]).

The criteria for determining whether or not a specific landholding has attained the status of untitled private agricultural land is restated under Joint DAR-DENR Memorandum Circular No. 2003-01, Series of 2003, as follows:

- (a) Continuous occupancy and cultivation by oneself or through one's predecessors-in-interest for at least thirty (30) years prior to the effectivity of RA 9176 on December 4, 2002;
- (b) The land must have been classified as Alienable and Disposable for at least thirty (30) years prior to the effectivity of RA 9176;
- (c) One must have paid the real estate taxes thereon; and
- (d) There are no adverse claims in the land. (Item II).

Similarly, the implementing procedures on the jurisdictional delineation between DAR and DENR are restated therein as follows:

- (a) DAR, through its offices, shall provide DENR, through its field offices, the list of untitled properties identified and/or documented for CARP coverage and other documents and data/ information as may be necessary;
- (b) As soon as DAR and DENR have jointly identified specific properties that may be covered under the Land Acquisition and Distribution (LAD) component of CARP, the CENRO or RTD-LMS shall issue to DAR the certification required under DAR-DENR-LBP Joint Memorandum Circular No. 12, series of 1994 for the landholdings being covered. Thereafter, the MARO shall initiate the acquisition process for the landholding concerned by sending the Notice of Coverage (CARP Form No. 5 (a), revised 2003) to the landowner, who shall have the right to select his retention area, and completes the documentation and distribution process;
- (c) DENR, through the CENRO, PENRO or RED, as the case may be, shall make available to DAR officials concerned certified copy of the following to implement this Circular:
  - (i) The cadastral survey records and/or isolated survey records including the list of claimants;
  - (ii) Land classification maps; and
  - (iii) Other documents, data and/ or information;
- (d) In case the landowner opts for retention, DAR shall conduct the segregation survey of the retention area and the subdivision of the remaining area for distribution and submits the survey returns to the DENR for verification and approval;
- (e) DENR shall accept and process the application for Free Patent application from the occupant/ land claimant covering the retained area;

- (f) DENR shall issue the Order of Approval for the Free Patent application covering the retention area, a copy of the same shall be a pre-requisite for the payment of the landowner compensation;

DAR shall generate the CLOAs covering the areas outside the retention area in accordance with existing guidelines, registers the same with the Register of Deeds and distributes titles to the agrarian reform beneficiaries. (Item III).

In case untitled public A & D lands are tenanted but lack the required 30-year possession, the disposition of the property shall be under the jurisdiction of the DENR, but leasehold arrangement between the public land claimant and the tenants covered by the pertinent agricultural laws, rules and regulations shall be respected and documented by DAR.

The DAR is mandated to protect and improve the tenurial and economic status of tenant-tillers in agricultural lands in retained areas and areas not yet acquired pursuant to RA 6657. It shall immediately fix the lease rental thereof in accordance with Section 34 of RA 3844, as amended. The rentals for all crops for all regions shall be periodically reviewed and adjusted to improve the condition of the farmer lessees. (Joint DAR-DENR Memorandum Circular No. 14, Series of 1997, item III [B]).

In short, the jurisdictions of DENR and DAR over untitled A & D lands in relation to CARP may be summarized as follows: The DENR shall issue free patent to the claimant for the retained area of not more than five (5) hectares, except in cases of hereditary succession wherein each heir shall be entitled to 5-hectare retention. On the other hand, the DAR shall issue CLOA for the excess area, subject to the payment of just compensation to the claimant.

This manner of allocating responsibilities is consistent with the State policy to “encourage the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits that the Congress may prescribe taking into account ecological, developmental or equity considerations, and subject to the payment of just compensation.” (Constitution, Art. XIII, sec. 4)

## **E. DAR Leasehold Operation**

Under RA 6657, all agricultural tenanted lands throughout the country are subject to leasehold. Thus, the concomitant DAR leasehold operation is carried out in the landowners' retained areas and in lands covered by CARP that are awaiting distribution to tenant farmers.

Although it is a non-land transfer activity, DAR's leasehold operation and its mandatory leasehold contracts executed between landowners and tenants ensure the security of the latter. The law provides that the landowner-lessor gets 25 % of the net harvest as rental for the use of the land and 75 % goes to the farmer-lessee.

### **1. Implementation Procedures**

DAR Administrative Order No. 06, Series of 2003, entitled *Rules and Procedures Governing Leasehold Implementation on Tenanted Agricultural Lands*, lays down the procedures on leasehold operation:

- *Identification Phase* - The Department of Agrarian Reform Municipal Office (DARMO) conducts field investigation and gather information on land holdings and

tenants subject to agricultural leaseholds operation; To facilitate leasehold related field activities, the MARO requests for the assistance of the Barangay Agrarian Reform Council (BARC), especially its Chairman;

- *Validation and Updating Phase* – The DARMO sends an invitation letter to landholders and tenants to discuss the coverage and implementation of leasehold, reviews and evaluates documents, and prepares a master list of landholdings;
- *Meeting and Mediation Conference* – The DARMO conducts a meeting with the lessor and lessee to explain the features of the leasehold system, interview the landholder and tenant to verify submitted documents and gathered information and prepare the list rental worksheet.
- *Execution/ Registration of Agricultural Leasehold Contract* - In case of agreement between the landholder and the tenant, the DARMO assists the parties in executing the agricultural leasehold contract, including supporting documents; transmits the leasehold documentation folder to Department of Agrarian Reform Provincial Office (DARPO) for affirmation of leasehold contract. Thereafter, the DARMO shall complete the registration and annotations of the leasehold contract.
- *Disagreements on Lease Rental/ Existence of Tenancy* – In case of disagreement between the landholder and the tenant on these issues, the same shall initially be subjected to mediation by the MARO. If the mediation fails, the issue shall be referred to the PARO for resolution. If the parties are not satisfied with the PARO's decision, they may bring the issue to the PARAD/ DARAB, and ultimately to the courts for decision.

## 2. Manpower and Budgetary Resources

At the DAR Central Office, the Bureau of Land Acquisition and Distribution (BLAD), specifically, the Land Tenure Development Division (LTDD) is responsible for planning, coordinating and monitoring leasehold operation. At the Regional and Provincial levels, the corresponding field operations units are responsible for planning, coordinating and monitoring the leasehold operations.

At the municipal level, the Municipal Agrarian Reform Officer (MARO) is the focal person responsible for CARP implementation, as well as leasehold operation. The MARO is assisted by a field team composed of an Agrarian Reform Program Technologist (ARPT), a District Facilitator and a Para-Legal Officer.

In CY 2003, the agency leasehold target was 32,430 ha. The total budget for leasehold operation amounted to ₱12, 414,204. The unit cost per hectare was ₱348.00 (**Table 4**)

**TABLE 4. DAR CY 2003 Leasehold Operation  
Target and Budget**

REGION/PROVINCES	TARGET ( HA )	BUDGET IN ₱ (@ ₱348/HA)
CAR	90	34,452
Region I	178	68,138
Region II	1,000	382,800
Region III	437	167,284

Region IV-A	4,932	1,887,970
Region IV-B	130	49,764
Region V	2,650	1,014,420
Region VI	1,467	561,568
Region VII	950	363,660
Region VIII	5,883	2,252,012
(Leyte )	(3,000)	(1,044,000)
Region IX	740	283,272
Region X	1,990	761,772
(Lanao Norte)	(1,000)	(348,000)
Region XI	348	133,214
Region XII	7,500	2,871,000
(North Cotabato)	2,500	870,000
(Sarangani)	1,500	522,000
(South Cotabato)	2,000	696,000
(Sultan Kudarat)	1,500	522,000
Region XIII	435	166,518
ARMM	3,700	1,416,360
(Maguindanao)	1,000	348,000
(Sulu)	1,200	417,600
<b>Total Program</b>	<b>32,430</b>	<b>₱12,414,204</b>

Source: DAR Planning Service ( April 23, 2003 )

### 3. Targets vs. Accomplishments

Based on the current DAR total leasehold scope (that is, landowners' retained areas and CARP-able lands not yet covered by land transfer) about 206, 871 ha. are targeted for leasehold arrangement. This leasehold scope represents 7% of the country's aggregate area of tenanted and leased lands.

Out of the 32,430 ha. targeted for CY 2003, the Department succeeded in placing 31,099 ha. under leasehold. (**Table 5**) The accomplishment represented 96% of the 32,430-hectare target. This benefited 13,733 tenant-farmers nation-wide.

**TABLE 5. Accomplishment in Leasehold Operations  
By Region, 2003**

REGION	AREA (HA)			FARMER – BENEFICIARIES (FBs)		
	TARGET	ACCOMP	%	TARGET	ACCOMP	%
CAR	90	64	71	120	69	58
I	178	223	125	400	341	85
II	1,000	1,117	112	1,226	990	81
III	487	493	101	405	286	71
IV-A	4,882	2,041	42	3,620	946	26
IV-B	130	108	83	105	57	54
V	2,650	4,002	151	2,800	1,529	55
VI	1,467	1,397	95	2,000	997	50
VII	950	1,269	134	1,380	1,317	95
VIII	5,883	6,242	106	1,934	1,914	99
IX	710	1,445	204	728	790	109
X	1,990	2,660	134	1,699	935	55

XI	348	709	204	134	246	184
XII	7,500	6,962	96	5,271	2,137	41
CARAGA	435	577	133	310	308	99
PHILS. SUB-TOTAL	28,700	29,309	102	22,132	12,862	58
ARMM	3,730	1,730	46	2,380	871	37
<b>PHILS. GRAND TOTAL</b>	<b>32,430</b>	<b>31,099</b>	<b>96</b>	<b>24,512</b>	<b>13,733</b>	<b>56</b>

Sources: DAR Planning Service and BLAD

Of the total lands placed under leasehold 18,235 ha involving 9,686 FBs were in the retained areas. About 12,804 ha. involving 4,047 FBs were in areas covered by CARP awaiting distribution to farmers.

The DAR's Bureau of Land Acquisition and Distribution (BLAD) reported that the Department in 2003 issued 12,705 registered leasehold contracts. These formal written leasehold agreements covered 29,983 ha of tenanted lands and 13,057 tenant farmers.

Among the country's 16 regions, Region VIII (Eastern Visayas, which includes Leyte province) and Region XII (Cotabato Area) chalked up significant marks in terms of leasehold operational covering area and numbers of registered tenant beneficiaries in CY 2003.

CY 2003 leasehold areas in Region VIII covered 6,242 ha. Leyte's leasehold area for the year consisted of 3,270 ha. (over 10% of the 2003 national figure).

For CY 2003, there were 1,914 DAR –registered tenant farmers in the region (nearly 14% of the national total in 2003) In Leyte for the same period 1,138 tenant farmers were counted (over 8% of the 2003 national total).

In terms of volume, over 50% of the 2003 leasehold accomplishment was accounted for by the following 10 provinces: **(Table 6)**

**TABLE 6. Ten Highest Ranking Provinces in DAR Leasehold Accomplishment 2003**

PROVINCE	AREA (In Ha)
1. North Cotabato	3,510 ha
2. Leyte	3,270 ha
3. South Cotabato	1,293 ha
4. Lanao del Norte	1,219 ha
5. Northern Samar	1,203 ha
6. Sultan Kudarat	1,129 ha
7. Sarangani	1,030 ha
8. Camarines Sur	983 ha
9. Zamboanga Sur	979 ha
10. Catanduanes	904 ha
<b>Total</b>	<b>15,520 ha</b>

Source: DAR CY 2003 Annual Report

The DAR's 2003 leasehold accomplishment by crop planted is shown in **Table 7** below:

**TABLE 7. DAR Leasehold Accomplishment  
By Crop Planted 2003**

PARTICULARS	AREA (HA)	NUMBER OF FBs
RA 3844/ PD 27	8,824 ha	4,939
Rice and Corn	8,824 ha	4,939
RA 6657	22,215 ha	8,794
Coconut	4,342 ha	1,333
Sugarcane	247 ha	120
Others	17,626 ha	7,341
<b>TOTAL</b>	<b>31,039 ha</b>	<b>13,733</b>

Source: DAR CY 2003 Annual Report

It should be noted that leasehold is provided for under: 1) R.A. No.3844 covering rice and corn lands with an area of seven ha and below which are tenanted and not covered by Operation Land Transfer under P.D. No. 27; and 2) R.A. No. 6657 which covers agricultural lands other than rice and corn with an area of five hectares and below.

As derived from **Table 7**, an average tenanted farm measured 2.26 ha (that is, 31,039 ha divided by 13,733 FBs). But to be more particular, as in the case of farms under RA 3844/PD 27, the average size of a tenanted farm cultivated by one farmer-beneficiary was 1.78 ha (that is, 8,824 ha divided by 4,939 FBs). For those farms under RA 6657, the average size of a tenanted farm cultivated by one farmer-beneficiary was 2.52 ha (that is, 22,215 ha divided by 8,794 FBs). The smaller sized rice corn farm is intended for subsistence production purposes. On the other hand, the larger sized cash crop farm is intended for commercial production purposes.

Based on DAR's cumulative data as of May 2004, the Department's leasehold operation from 1964 to 2003 year-end covered a total of 1,556,199 ha nation-wide, including the 31,039 ha placed under leasehold in 2003. Within this 39-year period, the DAR provided leasehold contracts to a total of 1,135, 328 tenant farmers nation-wide, including the 13,733 registered farmer beneficiaries (FBs) in 2003. (**Table 8**)

**TABLE 8. DAR Leasehold Operation ( 1964 – 2003 )**

REGION	AREA (HA)					FARMER BENEFICIARIES (FBs)				
	1964 to 2000	2001	2002	2003	TOTAL*	1964 to 2000	2001	2002	2003	TOTAL
PHIL.	1,491,116	15,965	18,349	31,039	1,556,199	1,103,167	9,245	9,183	13,733	1,135,328
LUZON	534,286	2,700	2,885	4,046	543,917	473,075	2,221	2,068	2,689	480,053
CAR	1,620	-	7	64	1,691	2,813	-	9	69	215,809
I	147,584	380	204	223	148,391	214,892	560	357	341	216,150
II	80,595	1,053	887	1,117	83,652	59,104	860	781	990	61,735
III	155,921	313	525	493	157,252	98,905	217	275	286	99,683
IV	148,566	954	1,262	2,149	152,931	97,361	584	646	1,003	99,594

<b>BICOL-VISAYAS</b>	411,328	9,164	8,524	12,910	441,926	329,690	4,628	4,437	5,757	344,512
V	43,605	866	1,553	4,002	50,026	40,968	488	757	1,529	43,742
VI	117,092	523	1,172	1,397	120,184	103,138	499	850	997	105,484
VII	66,542	1,682	1,266	1,269	70,759	90,872	1,671	1,408	1,317	95,268
VIII	184,089	6,093	4,533	6,242	200,957	94,712	1,970	1,422	1,914	100,018
<b>MINDA-NAO</b>	545,502	3,831	6,199	12,353	567,885	300,402	2,396	2,612	4,416	309,826
IX	133,936	426	297	1,445	136,104	99,679	342	227	790	101,038
X	194,842	672	2,975	2,660	201,149	96,306	230	1,098	935	98,569
XI	171,998	1,788	674	709	175,169	76,689	674	272	246	77,881
XII	43,047	651	1,851	6,962	52,511	27,000	994	800	2,137	30,931
CARAGA	1,679	294	402	577	2,952	728	156	215	308	1,407

\* Note; 1. Additional 2,471 ha, accrued in 2002 -2003, not segregated.  
 2. Additional 13,799 FBs, accrued in 2002-2003 not, not also segregated.  
 Source: DAR/ Bureau of Land Acquisition and Distribution (BLAD) May – June 2004

Given the total volume of leasehold accomplishment (1,556,199 ha) within the designated time frame (39 years), a very rough DAR leasehold area accomplishment rate of 39,902 ha per year is derived. By the same token, given the total number of tenant farmers serviced (1,135,328 FBs) within the same time frame (39 years), an equally rough DAR leasehold FB accomplishment rate of 29,100 FBs per year is obtained. Reduced to simplest terms, a yearly accomplishment rate of 1.37 ha of leasehold per one FB is generated through the DAR leasehold operation.

Going back to the potential tenanted area of 3,149,905 ha (at 50% tenancy of partly owned farm [please refer to page 6]), if and when the DAR's leasehold operation cumulative accomplishment of 1,556,199 ha is deducted, the potential leasehold balance would be 1,593,706 ha. At the given accomplishment rate of 39,502 ha per year, it would take DAR about 40 years to place under leasehold the remaining potential patented areas. **(Table 9)**

And if the potential tenanted areas were at 100% tenancy (3,149,905 ha [please refer to page 6]) there would be much greater expanse of potential tenanted areas at 4,762,951 ha. If and when the DAR leasehold operation cumulative accomplishment of 1,556,199 ha is deducted, the potential leasehold balance would be 1,593,706 ha. At the given accomplishment rate of 39,502 ha per year, it would take DAR, about 80 years to place under leasehold the remaining tenanted areas. **(Table 9)**

**TABLE 9. Potential Area of Tenanted Lands and Projected DAR Leasehold Balances**

Status	Physical Area (ha)	
	POF at 50% Tenanted	POF at 100% Tenanted
Tenanted & Leased Farms	1,536,868	1,536,868
Partly Owned Farms (POF) – Tenanted Parcels	1,613,041	3,226,083

Potential Areas – Tenanted Lands	3,149,905	4,762,951
DAR Leasehold Operation Accomplishment (1964-2003)	(1,556,199)	(1,556,199)
Potential Leasehold Balance	1,593,706	3,206,752

Sources: Table 1 & Table 8

#### **4. Leasehold Operations in Selected Areas in Batangas Province**

To gain a better understanding of DAR's leasehold operations at the local level, site visits were conducted in certain areas under leasehold in Batangas on May 6-7, 2004. Leasehold operation in selected sugarcane, coconut, rice, corn, and mixed crop areas of Batangas, namely in the towns of Tuy, Lian, Sto. Tomas, Balayan and in Lipa City, was observed and evaluated. During these visits, the agency's experience in agricultural leasehold operation was looked into and concerned leasehold parties interviewed. Three tenants and two landowners were visited and interviewed. The third landowner was reportedly indisposed; hence, the leasehold documentation folder of his landholding available at the MARO was instead reviewed. The study team primarily inquired into the following concerns:

- How does DAR implement leasehold in tenanted agricultural lands?
- What is the sharing arrangement followed?
- How long does it normally take DAR to formalize leasehold in a particular landholding?
- What are the manpower, cost and other resources required in implementing leasehold?

The findings from the field visits in Batangas can be summarized as follows:

- Leasehold implementation was undertaken by DAR in the selected areas in Batangas primarily through successful mediation between tenants and landowners. In one case (Aniceta Villanueva), the tenant and the landowner themselves jointly approached DAR and requested for the execution of a leasehold contract which DAR did in the same day;
- Tenants lease rental amounted to 25 % percent of the produce (sugarcane, coconut, rice, corn and mixed crops) computed at the average harvest for three preceding agricultural years;
- The processing time of leasehold contracts in the selected samples was relatively short, i.e., from one day to one month;
- The DAR's field personnel and budgetary resources for leasehold operation were very limited and thinly spread. The bulk of agency's available resources are devoted to land acquisition and distribution activities and the provision of support services to agrarian reform beneficiaries (ARBs). At the local level, leasehold operations are handled either by the MARO, the Legal/Paralegal Officer or the ARPT.

The written leasehold contracts have given Batangas tenants strong sense of security of tenure, and for the landowners the assurance of the tenant's lease rental. Notwithstanding constraints on manpower and financial resources, the DAR was able, at least in the areas

visited, to expeditiously implement leasehold in tenanted landholdings. The feasibility of transferring a portion of tenanted land to the tenant was demonstrated in the case of Faustino Pose who opted to place a portion of his tenanted land under CARP through Voluntary Land Transfer/ Direct Payment Scheme (VLT/ DPS) in favor of his long –time tenant.

The profile of selected Batangas tenants and landowners are attached as **Annexes “B”** and **“C”**, respectively.

### III. THE FREE PATENT TITLING SYSTEM

#### E. Concept of Free Patent and Governing Laws

Free patent is a form of concession of public land suitable for agricultural purposes granted by the government through administrative confirmation of imperfect or incomplete title. (CA 141, sec. 11). An applicant or claimant acquires imperfect or incomplete title after he has “continuously occupied and cultivated a tract or tracts of agricultural public land subject of disposition, either by himself or through his predecessors-in-interest, or ... paid the real estate taxes thereon while the same has not been occupied by any person.” (CA 141, sec. 44).

The rule, as laid down by the Supreme Court, is that alienable public land held by a possessor or through his predecessor-in-interest, openly, continuously and exclusively for the prescribed statutory period (30 years under the Public Land Act) is converted to private property by the mere lapse of said period *ipso jure* (by operation of law). (Director of Lands vs. Intermediate Appellate Court, 146 SCRA 509 [1986]).<sup>5</sup>

The process of issuing the grant is administrative in nature since the filing of application, processing, investigation, approval and issuance of patent go through the administrative (as opposed to judicial) machinery of the government. These lands are otherwise referred to as “untitled private agricultural lands”.

The issuance of free patent is primarily governed by CA 141 (1936), also known as the “Public Land Act”, specifically Chapters VII and XIV thereof. On March 28, 1990, RA 6940 was enacted granting a period of up to December 31, 2000 for the filing of applications for free patent. With the expiration of the period under RA 6940 for filing free patents, RA 9176 was passed on November 13, 2002, extending the same until December 31, 2120. The basic provision defining who are entitled to free patents under Section 44 of CA 141, as amended by RA 6940, however, has remained.

The filing, processing , investigation, approval and issuance of free patents are governed by a series of implementing rules, to wit: DENR Administrative Order No. 67, Series of 1990 (*Guidelines in the Implementation of the “Handog Titulo” Program*), DENR

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<sup>5</sup> In an earlier case, *Herico vs. Dar*, 95 SCRA 437 (1980), the Supreme Court, in interpreting Section 48 (b) of the Public land Act which provides for judicial confirmation of imperfect title held:

As interpreted in several cases, when the conditions as specified in the foregoing provision are complied with, the possessor is deemed to have acquired, by operation of law, a right to a grant, a government grant without the necessity of a certificate of title being issued. The land, therefore, ceases to be of the public domain and beyond the authority of the Director of Lands to dispose of. **The application for confirmation is a mere formality, the lack of which does not affect the legal sufficiency of the title** as would be evidenced by the patent and the Torrens title to be issued upon the strength of said patent (p. 443-444; emphasis supplied).

Memorandum Circular No. 9, Series of 1993 (*Supplementary Guidelines on the Disposition of Lands through Free Patent*), DENR Administrative Order No. 2000 -67 (*Prescribing New Guidelines, Application Form and Standards for Public Land Applications and Records Management*), and Joint DAR-DENR Memorandum Circular No. 2003-01, Series of 2003. (*Reaffirming the Policies and Procedures Contained in the Joint DAR-DENR Memorandum Circular Nos. 14 and 19, both Series of 1997, in view of the Extension of the Free Patent Law under Republic Act No. 9176*).

#### **F. Requisites for Issuance of Free Patents**

Section 44 of CA 141, as amended by RA 6940, stipulates the basic requirements for the issuance of free patent, to wit:

SEC. 44. Any natural-born citizen of the Philippines who is not the owner of more than twelve (12) hectares and who, for at least thirty (30) years prior to the effectivity of this amendatory Act, has continuously occupied and cultivated by himself or through his predecessors-in-interest a tract or tracts of agricultural public lands subject to disposition, who shall have paid the real estate tax thereon while the same has not been occupied by any person shall be entitled, under the provisions of this Chapter, to have a free patent issued to him for such tract or tracts of such land not to exceed twelve (12) hectares.

Thus, a free patent application filed under RA 6940 must satisfy the following requirements:

- (a) The land must have been occupied and cultivated on or prior to April 16, 1960;
- (b) The land is free from claim and conflicts;
- (c) The applicant has met the requirement regarding length of occupation and cultivation (*Note: The applicant must have continuously occupied and cultivated such land for thirty (30) years prior to the effectivity of RA 6940, i.e., on or before April 16, 1960 by himself or through his predecessors-in-interest*); and
- (d) The applicant must have paid the real estate tax thereon. (DAR Memo Circular 9 [1993], item 2, par. 2).

These requisites were restated and updated under Joint DAR-DENR Memorandum Circular No. 2003-01, Series of 2003. The criteria for determining whether or not a specific landholding has attained the status of untitled private agricultural land and thus qualified for free patent were reaffirmed as follows:

- (a) Continuous occupancy and cultivation by oneself or through one's predecessors-in-interest for at least thirty (30) years prior to the effectivity of RA 9176 on December 4, 2002;
- (b) The land must have been classified as Alienable and Disposable for at least thirty (30) years prior to the effectivity of RA 9176;
- (c) One must have paid the real estate taxes thereon; and
- (d) There are no adverse claims in the land. (Item II).

All these requisites must concur in order that a free patent may be issued to an applicant.

### G. Limitations/ Restrictions on Free Patent

Notwithstanding the fact that lands under free patent have acquired the status of private property, the same are subject to certain limitations or restrictions.

Thus, lands acquired under free patent shall not be subject to alienation or encumbrance from the date of approval of the application and for a term of five (5) years from and after the date of issuance of the patent or grant, except in favor of the Government or any of its branches, units, or institutions. (CA 141, sec. 118).

In case land covered by free patent is sold, the grantee, his widow or legal heirs shall have a right to repurchase land within a period of five (5) years from the date of its conveyance. (CA 141, sec. 119).

Corporations, associations, or partnerships are prohibited from acquiring any right, title, interest, or property right to any land granted under free patent or to any permanent improvement therein, except with the consent of the grantee and the approval of the Secretary of Environment and Natural Resources and solely for commercial, industrial, educational, religious or charitable purposes. (CA 141, sec. 121).

Lands acquired under free patent, or any permanent improvement therein, shall not be encumbered, alienated, or transferred, except to persons, corporations, associations, or partnerships who may acquire lands of the public domain. (CA 141, sec. 122).

Any acquisition, conveyance, alienation, transfer, or other contract made in violation of the foregoing limitations or restrictions shall be null and void. It shall also produce the effect of annulling and canceling the grant, title, or patent and cause reversion of the property and its improvements to the State. (CA 141, sec. 122).

### H. Status of Land Titling

The Philippines has 30 million hectares of land. Of this, 14.1 million hectares are A&D lands. Sixty-six percent (66%) or 9.3 million hectares of the A & D lands have been titled either administratively or judicially as of December 2001. Lands administratively titled constitute 6.2 million hectares (44%), the bulk of which were issued with free patents. The remaining untitled area consists of 1.3 million hectares (9%), most of which will avail of the administrative land titling process under free patent. The breakdown of the land titling status appears in **Table 10**.

**TABLE 10. Land Titling Status (as of December 2001)**

<i>Land Types</i>	<b>Area</b> (million ha)	<b>Share</b> (%)
Titled	9.3	66
Administratively Titled	6.2	44
Judicially Titled	3.1	22
Remaining Untitled	1.3	9
Non-Agricultural Lands (Roads/Open Spaces)	1.8	13
Areas Turned Over to Other Agencies by Proclamations (Military Reservations/KKK)	1.7	12

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Areas/etc.)		
<b>Total</b>	<b>14.1</b>	<b>100</b>

Source: Land Management Bureau

It should be noted that the remaining untitled lands of 1.3 million hectares as of 2001 closely tallies with the DENR balance under CARP for the same year amounting to 1.29 million hectares (**Table 9**).

### **E. Revision of Free Patent Law**

Compared to judicial confirmation of imperfect title, administrative titling through the issuance of free patents holds much promise in mass titling of A & D lands. It is less costly and less time-consuming than the other modes. However, to maximize its use as an efficient and viable land-titling alternative, there is a need for policy changes in the free patent law (CA 141, as amended by RA 6940 and RA 9176).

The Land Administration Management Project (LAMP) has produced a proposed revision of the free patent law (the "LAMP draft"). The LAMP draft contains among others the following significant changes:

- a) Simplification of the requirements for issuance of free patents through (i) shortening the period of occupation/ cultivation from 30 to 10 years, (ii) removal of payment of realty taxes as pre-condition for issuance, and (iii) removal of the condition that the land be must not be occupied by any person (Sec. 1);
- b) Inclusion of a proviso that if there are tenants, share croppers, regular or seasonal farm workers on the land, the issuance of free patent to the applicant shall be without prejudice to their rights under existing agrarian reform laws (Sec. 1);
- c) Inclusion of a proviso that if the awarded free patent exceeds the allowable retention limit under existing laws, the same will be subjected to acquisition and distribution (Sec. 1);
- d) Expansion of coverage of free patent to lands of the public domain for residential, commercial, industrial, educational, charitable or religious purposes, not to exceed 1,000 square meters (Sec. 2);
- e) Inclusion of provision on automatic release of lands within unclassified areas which are applied for and found eligible for issuance of free patent (Sec. 3);
- f) Removal of the restrictions on alienation or encumbrance, right of repurchase, and exemption from being held in satisfaction of debt (Sec. 4); and
- g) Exemption from all fees and charges (Sec.9).

The reduction of the required period of occupation and cultivation from 30 to 10 years will harmonize the free patent law with the Civil Code. The Civil Code provides that ownership and other real rights over immovable property are acquired by ordinary prescription through possession of ten years. (Art.1134). Ordinary acquisitive prescription means possession in good faith and with just title. (Art. 117). For possession to ripen into ownership, it must be in the concept of an owner, public, peaceful and uninterrupted. (Art.

1118). Possession in good faith presupposes that there is no other person claiming a better right over the property. Thus, the condition that the land applied for must not have been occupied by any person for an applicant to be issued with free patent is a surplusage.

Removal of the requirement that real estate tax on the land be first paid as well as the restrictions on alienation or encumbrance, right of repurchase, and exemption from being held in satisfaction of debt is consistent with the concept that lands under free patent are converted into private property by mere lapse of the prescribed statutory period of occupation and cultivation. Extending the scope of free patent to alienable lands devoted for non-agricultural purposes, automatic release of unclassified areas determined to be qualified for free patent, and exemption from all fees and charges will undoubtedly spur mass titling of heretofore untitled areas.

However, the proposed proviso that the issuance of free patent to the applicant shall be without prejudice to the rights of tenants under existing agrarian reform laws is inadequate for promoting the State policy to establish “owner cultivatorship of economic –size farm as the basis of Philippine agriculture.” (RA 6657, sec, 2). There is a need for clear and categorical provision disqualifying free patent applicants who employed or used tenants before the lapse of the required period of occupation/ cultivation. Tenancy arrangements may be recognized and the rights of tenants protected in accordance with existing agrarian laws only in cases where the claimant has already complied with the conditions for a grant of free patent, and the land thus converted into private property. In practical terms, the institution of tenancy in free patent areas should be recognized only if it occurs after the proposed ten year period of occupation and cultivation (under the LAMP draft) by the applicant himself or through his predecessors-in-interest. In other words, engagement of a tenant by a claimant in free patent areas should be validly recognized only after the property has become private.

It is likewise submitted that the period fixing the deadline for filing applications for free patents not later than December 31, 2120 should be deleted from Section 45 of CA 141, as amended by RA 9176. The fixing of the period should be left entirely to the President upon the recommendation of the Secretary of Environment and Natural Resources. This would obviate the need to go back to the legislature for an extension every time said period expires and there are still remaining areas to be covered by free patents.

#### **IV. LAMP FREE PATENT TITLING PROTOTYPE AND THE TENANCY ISSUE**

##### **C. Profile of Prototype Areas**

The LAMP prototype projects are based in the municipalities of Santa Fe, San Miguel and Pastrana in Leyte Province (**Map**). In these areas, the LAMP has been testing and developing procedures for mass titling of alienable and disposable ( A & D ) lands - - the most promising of the land titling modes being the free patents.

The island province of Leyte, located in the Eastern Visayan Region, has a total land area of 5,712 square kilometers (571,280 ha. ) The provincial land profile is depicted in **Table 11**.

**TABLE 11. Profile of Leyte Provincial Lands**

Particulars	Total Area (Ha)	% Total Area
Total Area (approx. 5,712 sq. km)	571,280	100%
Alienable & Disposable (A & D) Lands	388,595	68%
Agriculture (nearly 90% A & D )	(345,067)	(90%)
Palay	(59,842)	
Coconut	(208,337)	
Others	(76,888)	
Others (nearly 10% A & D)	(143,528)	(10%)
Forest Lands	182,685	(32%)

Source: Leyte Provincial Planning and Development Office (PPDO) Tacloban City, 2004

It is a first-class province made up of two cities, Ormoc and Tacloban (the capital), 41 municipalities and 1,641 barangays. (General Information, Provincial Planning and Development Office [PPDO], Tacloban City)

Total provincial population in 2000 stood at 1,592,336. Total number of provincial households in 2000 was 322,527. Average provincial household size was 4.92.

Local terrain is relatively flat to gently rolling, except for the mountainous interior. About 68% of Leyte's lands (388,595 ha.) are classified as alienable and disposable (A & D), while the balance of 32% (182,685 ha.) is forest land. (2002 – 2010 Provincial Physical Framework Plan, Province of Leyte).

Nearly 90% of the A & D lands (that is 345,067 ha.) are utilized for agricultural purposes. The bulk of the agricultural area is planted to rice (59,842 ha.) and coconut (208,337 ha).

The general profile of LAMP prototype areas is shown in **Table 12** below.

**TABLE 12. Profile of LAMP Prototype Areas**

LAMP-Covered Municipality	Municipal Classification	Area – In sq. km (ha)	No. of Barangays	Population	No. of Households
Santa Fe	5 <sup>th</sup>	81.9 (8,190 )	20	15,042	2,889
San Miguel	5 <sup>th</sup>	145.1 (14,510)	21	15,153	3,017
Pastrana	5 <sup>th</sup>	79.3 (7,930)	29	14,351	2,805
<b>Total</b>		<b>306.3 (30,630)</b>	<b>70</b>	<b>44,546</b>	<b>8,711</b>

Sources: Provincial Planning & Development Office, Tacloban City, 2002  
NSO Report No. 1-H Population by Province, City/ Municipality & Barangays – Eastern Visayas Leyte, 2000

At the time of the tenancy study, LAMP has been focusing its efforts on seven (7) barangays enumerated and demographically profiled in **Table 13**.

**TABLE 13. Specific Project Sites in the LAMP Prototype Areas**

<b>LAMP-Covered Municipality/ Barangay</b>	<b>Population</b>	<b>No. of Households</b>
<u>Santa Fe</u>		
1) San Juan	1,041	191
2) San Roque	1,624	328
<u>San Miguel</u>		
3) Lukay	778	152
<u>Pastrana</u>		
4) Capilla	172	32
5) Halaba	354	72
6) Jones	585	111
7) Socsocon	375	69
<b>Total</b>	<b>4,929</b>	<b>955</b>

Sources: Provincial Planning & Development Office, Tacloban City, 2002  
NSO Report No. 1-H Population by Province, City/ Municipality & Barangays – Eastern Visayas, Leyte, 2000

The 1991 Census of Agriculture counted 142,073 farms in Leyte. These farms had a total area of 271,923 ha. About 41% of these farms had sizes ranging from one to 2.99 ha. This made for a two-hectare average farm size in the province.

The 2002, Leyte PPDO issued General Information document reported that the province had 345,067 ha. being used for agricultural purposes.

In 1991, Leyte had 63,404 palay farms with a total area of 107,592 ha. The tenanted /leased rice farms numbered 43,312 and covered 53,130 ha. In terms of numbers, 68 % were tenanted /leased, and in terms of area, 49% were tenanted or leased. (1995 Provincial Profile: Leyte).

The PCA Region VIII data of 2001 revealed that 208,337 ha. in Leyte were planted with coconut. The tenanted areas covered 145,836 ha, thus accounting for 70% of these coconut lands. (Regional Coconut Industry Development Plan [2002-2010] PCA Region VIII).

Out of the total of 345,007 ha being used for agriculture, about 315,929 ha were allocated for palay and coconut production (nearly 92%), while remainder of 29,138 ha (about 8%) were planted to other crops.

The total tenanted areas of both the rice-and coconut-producing areas of Leyte measured 198,966 ha. This accounted for about 58% of the provincial farm lands as significant factor that contribute to the high incidence of agricultural tenancy in Leyte. (**Table 14**)

**TABLE 14. Estimated Area of Rice, Coconut and Other Farm Lands and their Share of Tenanted Lands (2002)**

<b>PARTICULARS</b>	<b>AREA (Ha)</b>	<b>% TOTAL AREA</b>
Agricultural/ farm lands, total <sup>1</sup>	345,067	100%
Rice farm lands, total <sup>2</sup>	107,592	31.2%
Tenanted & Leased ( % Rice Total farm land) Areas	(53,130)	(49%)
Coconut farm lands, total <sup>3</sup>	208,337	60.4%
Tenanted Areas (% Coconut Total farm land)	(145,836)	(70%)
Other Crops	29,138	8.4%

In Santa Fe, there were 1,801 farms with a combined area of 2,679 ha. Total area planted to coconut was 2,232 ha. Coconut farmers numbered were 2,981 ha.

Rice production data of Santa Fe were not readily available.

In San Miguel, its 1,774 farms had a combined area of 4,469 ha. Total area planted to coconut was 2,981 ha. Coconut farmers numbered 1,856.

Rice production data of San Miguel, from Nov. 2003 – April 2004, revealed that the harvest area of 272 ha. posted a total palay production of 801 metric tons (MT).

In Pastrana, its 1,707 farms had a combined area of 3,466 ha. Total area planted to coconut was 2,572 ha. There were 1,856 coconut farmers. Rice production data of Pastrana from Nov. 2003 – April 2004, revealed that the harvest area of 703 ha yielded a total palay production of 2,930 metric tons (MT).

#### **D. Procedures in Adjudication and Issuance of Free Patents**

##### DENR Standard Procedures

The standard procedures of the DENR in the processing of free patent applications are presented in the Manual for Land Disposition (pp. 13-17), which may be summarized as follows:

##### *1. Filing of Application with CENRO*

The application should be in the prescribed form and under oath. The application must show among others that the land is classified as alienable and disposable; the applicant is

Sources:

- <sup>1</sup> PPDO Leyte, 2002
- <sup>2</sup> NSO 1995 Provincial Profile Leyte
- <sup>3</sup> PCA Region VIII 2002

qualified; the land is surveyed and does not exceed the maximum area allowed; and the land is not claimed by any other person. (*Note:* A new Public Land Application Form has been prescribed for all patent applications per DENR Administrative Order No. 2000-67).

## *2. Posting of Notice of Application*

The notice should be posted in the provincial capitol, municipal building, and barangay hall where the land applied for is located. It shall be posted for two consecutive weeks and accompanied by a joint affidavit of two disinterested persons proving the applicant's occupancy of the land either by himself or his predecessor-in-interest.

## *3. Final Investigation and Submission of Land Data Record Sheet*

The investigation will ascertain among others: a) whether the land is alienable and disposable; b) when the land was first occupied and cultivated by the applicant or his predecessors-in-interest; c) actual occupant and kind of improvements and party responsible therefor; d) whether land is fully cultivated or not; e) correct lot and area; f) **whether the applicant used share tenants to cultivate the land in violation of PD 152;** and g) adjoining lots. (*Note:* Under DENR Admin. Order No. 2000-67, the land inspector/land investigator shall within 30 days from the last day of posting of notice conduct the field inspection [Item C. 1])

## *4. Preparation of Technical Description, Order of Approval of Application and Issuance of Patent, and Proposed Patent in Judicial Form No. 54 and 54-D*

If all the requirements of the law are complied with, the Technical Description, Order of Approval of Application and Issuance of Patent, and Proposed Patent in Judicial Form No. 54 and 54-D are simultaneously prepared.

## *5. Approval of Patent by Authorized Official*

The proposed patent together with the records of the application are then transmitted by the CENRO to the duly authorized DENR official for approval depending on the area of the land applied for. The signatories are the PENRO if the area is five hectares and below, the Regional Executive Director if the area is five up to ten hectares, and the Secretary if the area is more than ten hectares.

## *6. Registration of Patent and Issuance to Applicant*

The signed patent is numbered and transmitted to the Register of Deeds for registration. The prescribed administrative fees should be paid before the patent is transmitted to the ROD (DENR Admin. Order No. 67, Series of 1990, Item 4.b). The patent is then issued to the applicant.

## LAMP Systematic Adjudication Procedures

On the other hand, the procedures for adjudication and issuance of free patents in the prototype areas as presented in the LAMP PIO 1 Field Operations Manual, Vol. 1, 1<sup>st</sup> edition, March 31, 2004, may be summarized as follows:

### *1. Community Mobilization and Participation*

Community Mobilization and Participation consists of three phases, namely: Community Pre-Entry, Community Entry, and Community Mobilization.

Community Pre-Entry refer to activities undertaken prior to field work for the purpose of gaining initial acceptance in the community, such as: coordination with municipal and barangay officials, clarification of roles and responsibilities among partners, and collection of secondary data for operations planning.

Community Entry involves establishing coordination and support with community, coordination with DAR and existing people's organizations, social investigation, core group formation, action planning, activation of Lupong Tagapamayapa, and capability building for dispute resolution.

Community Mobilization entails initial validation of list of claimants and land tenure profiling, operations planning for sketching and interview, and conduct of barangay assemblies. The community is mobilized to participate in systematic adjudication activities from barangay assemblies to interview, ocular inspection and survey.

## *2. Survey and Adjudication*

Survey and adjudication includes the following processes: validation of existing survey; political boundary establishment, correction and subdivision surveys; adjudication; base camp review and processing of applications; and cadastral surveys and approvals.

Adjudication activities involve among others interview of claimants, completion of application, collection of evidence to support application, conduct of ocular inspection, resolution of disputes, and coordination with DAR for formalization of leasehold. (*Note*: interview and ocular inspection are undertaken simultaneously).

Base camp review and processing encompass such activities as collection of lacking documents, acceptance and numbering of applications, posting of notices, securing A & D certification, processing by Land Management Officer (LMO) 2, technical description research and preparation, preparation of patent, final screening and review by Systematic Adjudication Team (SAT) Leader, CENRO review and endorsement, and PENRO approval of patent. (*Note*: CENRO endorsement and PENRO approval are done at the base camp).

## *3. Registration and Land Records Management*

Patents are transmitted to the ROD for registration. Applicants are notified to pay the fees, and upon payment, patents are distributed in the barangay. The land records are installed, continuously updated, and ultimately returned to the CENRO.

## *4. Monitoring and Evaluation*

Field operations activities are subject to regular monitoring and evaluation. Regular reports are prepared and submitted.

### Comparison Between DENR and LAMP Procedures

In terms of scope, the DENR procedures are limited to the bare essentials from the filing of applications, posting of notice, final investigation, preparation of technical description, order, and patent, approval and registration of patent, whereas, the LAMP procedures do not just focus on the basic steps for free patent processing as prescribed by the DENR but are more holistic in approach encompassing such activities as community mobilization and participation, survey and adjudication, registration and land records management, monitoring and evaluation.

Even if the LAMP procedures appear more expansive, the processing of applications has become more efficient since certain key activities such as interview of applicants and ocular inspection are done simultaneously; moreover, the CENRO review and endorsement and the PENRO approval are now undertaken at the base camp itself.<sup>4</sup>

The DENR procedures are incorporated into the LAMP systematic adjudication process. More specifically, the DENR standard procedures are subsumed within the LAMP adjudication and base camp review and processing activities. The application form used, the supporting documents required, and the information to be ascertained in processing of the application are essentially similar in both the DENR and LAMP procedures.

### E. Extent of Tenancy in Free Patent Areas

The Project has no reliable data at hand on the actual number of tenants and claimants with tenants. Previously, the Project did not gather primary data on the status of local tenants. What is currently available is a land tenure profile based on the list of claimants and this consequently served as the starting point in determining the extent of tenancy in the LAMP free patent areas.

At the LAMP prototype areas, about 5,468 ha or 70 % of the total coconut lands (7,785 ha) are tenanted. **(Table 15)** Sta. Fe has 1,562 ha of tenanted coconut lands, San Miguel contains 2,086 ha and Pastrana has 1,800 ha. The 70% tenancy factor applied in determining the estimated area of tenanted coconut lands is the same benchmark arrived at by the PCA Region VIII office in estimating the tenanted coconut-producing areas of Leyte as well as those of the Eastern Visayas Region, (2002-2010 Coconut Industry Development Plan of Region VIII)

**TABLE 15. Estimated Area of Tenanted Coconut Lands in the LAMP Prototype Areas ( May 2004 )**

Lamp- Covered Municipality	Total Coconut Area (Ha)	Tenancy Factor (70%)	Tenanted Coconut Area (Ha)
Sta. Fe	2.232	.70	1,562 ha
San Miguel	2.981	.70	2,086 ha
Pastrana	2.572	.70	1,800 ha
<b>Total</b>	<b>7,785</b>		<b>5,468</b>

Source: PCA Region VIII, 2002-2010 Coconut Industry Development Plan

The 5,468 ha tenanted coconut area accounts for 70% of the total coconut-producing lands (7,785 ha) in the LAMP prototype areas. The same tenanted coconut-producing area constitutes about 18% of the combined total area of the LAMP covered municipalities (30,360 ha [please refer to Table 12]).

<sup>4</sup> During the field work for the tenancy study, the study team had actually observed CENRO Pedrito Torre at the base camp in San Miguel review and initial 35 free patent applications.

In the LAMP prototype areas, the estimated number of coconut tenant farmers is 4,065, or 70% of the estimated 5,908 coconut farmers found in the three LAMP-covered municipalities.

The coconut-dependent household population stands at 20,675. The estimated number accounts for a significant 46% of the combined household population of the three LAMP municipalities. (Table 16 [please refer to Table 12])

**TABLE 16. Estimated Population of Coconut Tenant Farmers and Coconut - Dependent Tenant Households in LAMP Prototype Areas (May 2004)**

Lamp - Covered Municipality	No. of Coconut Farmers	Tenancy Factor	No. of Coconut Tenant farmers	Average Household Size	Coconut Tenant Household Population
Sta. Fe	2,296	.70	1,607	5	8,035
San Miguel	1,756	.70	1,229	5	6,145
Pastrana	1,856	.70	1,229	5	6,495
<b>Total</b>	<b>5,908</b>		<b>4,065</b>		<b>20,675</b>

Sources: PCA Region VIII, 2002-2010 Coconut Industry Development Plan and NSO Census 2000

In the prototype areas, there are at least 487 palay farms. This is based on the reported 675-ha total palay harvest area (crop year November 2003 - April 2004) reported by the Office of the Provincial Agriculturist. This is likewise based on the average farms size of two ha. Tenanted palay farms are in the ball-park figure of 330, based on the 68% tenancy factor arrived at by the NSO 1995 Provincial Profile for Leyte, when determining the number of tenanted farms of the province in 1995.

In the same NSO profile, the 49% factor arrived at when in determining the tenanted palay areas was applied to come up with the estimated 477-ha of tenanted palay production area in the LAMP prototype areas. In San Miguel, the estimated tenanted palay area is about 133 ha. At Pastrana, the tenanted portion of its palay production area is about 344 ha. Santa Fe has no available data. Table 17 below shows the estimated area of tenanted palay lands in the LAMP prototype areas

**TABLE 17. Estimated Area of Tenanted Rice Lands in the LAMP Prototype Areas (May 2004)**

Lamp-Covered Municipality	Total Palay Harvest Area (Ha)	Average Farm Size ( Ha)	No. of Palay Farms	No. of Tenanted Farms (tenancy factor 68%)	Tenanted Palay Area (Ha) tenancy factor 49%
Sta. Fe	No Data	No Data	No Data	No Data	No Data

San Miguel	272	2	136	92	133
Pastrana	703	2	351	238	344
<b>Total</b>	<b>675</b>		<b>487</b>	<b>330</b>	<b>477</b>

Sources: Office of the Provincial Agriculturist, Tacloban City, Leyte and NSO 1995 Provincial Profile

In the LAMP prototype areas, the estimated number of palay tenant farmers is 330. Its palay-dependent tenant household population stands at 1,650. (**Table 18**)

**TABLE 18. Estimated Population of Palay Tenant Farmers and Palay- Dependent Tenant Households In LAMP Prototype Areas (May 2004)**

Lamp - Covered Municipality	No. of Palay Tenant Farmers (1 tenant / farm)	Average Household Size	Palay Tenant Household Population
Sta. Fe	No Data	No Data	No Data
San Miguel	92	5	460
Pastrana	238	5	1,190
<b>Total</b>	<b>330</b>		<b>1,650</b>

Sources : Office of the Provincial Agriculturist , Tacloban City, Leyte and NSO, 1995 Provincial Profile, Leyte

In the LAMP prototype areas as depicted in the **Table 19**, the estimated area of tenanted palay and coconut croplands is 5,925 ha (Please note that Sta. Fe has no available palay production data).

In Sta. Fe, the 1,562-ha tenanted cropland is about 58% of the town's total agricultural area (2,679 ha)

In San Miguel, the 2,219-ha tenanted land is 50% of the town's farming area (4,469 ha.)

Pastrana's 2,144-ha tenanted land covers 62% of the municipality's agricultural area (3,466 ha) .

The estimated number of tenant farmers found in palay and coconut- producing areas of the LAMP prototype areas is 4,465 (Further found in Table 14)

It is estimated that the tenant household population in the LAMP prototype areas is 22,325. This is about 50% of the total household population of the prototype areas (44,546).

**TABLE 19. Estimated Tenanted Areas and Population of Tenant Farmers/Household in LAMP Prototype Areas (May 2004)**

Lamp-Covered Municipality/Cropland	Estimated Tenanted Area ( Ha)	Estimated no. of Tenant Farmers	Estimated Tenant Household Population
Sta. Fe Palay Coconut	No Data 1,562	No Data 1,607	No Data 8,035
San Miguel Palay Coconut	133 2,086	92 1,229	460 6,145
Pastrana Palay Coconut	344 1,800	238 1,299	1,190 6,495
<b>Total</b>	<b>5,925</b>	<b>4,465</b>	<b>22,325</b>

Sources: PCA Region VIII, Government Center, Palo, Leyte, Department of Agriculture (DA) Leyte, and NSO 1995 Provincial Profile Leyte, and NSO Census 2000.

At San Miguel where tenant farmers number 1,321 about 7% are rice producers, and the bulk of 93% are coconut producers. Roughly, the ratio of palay tenant to coconut tenant is 1:13

At Pastrana, where tenant farmers number 1,537, about 15% are rice producers, and about 85% are coconut producers. Roughly, the ratio of rice tenant to coconut tenant is 1:5.

Sta. Fe's tenant households accounts for 53% of the town's total household population. In San Miguel, tenant household constitutes 44% of the town's total household population. Pastrana's tenant household's make up 54% of the town's total household population. Roughly, the extent of agricultural tenancy in the LAMP's prototype areas (Free Patent Areas) would be within the band of 50%.

#### **F. Tenancy Characteristics in the Prototype Areas**

To validate the existence of agricultural tenancy at the LAMP prototype areas and determine their characteristics, a field survey was conducted. A predetermined number of 28 respondents (consisting of 15 tenants and 13 landowners) were interviewed on-site in the seven barangays of the prototype areas on May 26-27, 2004. The respondents served as key informants and were pre-identified by the study team with considerable assistance from the PIO 2 staff. The lists of the respondents are attached as **Annexes "D" and "E"**. Due to time and material constraints, the emphasis of the survey was on characterizing the actual tenancy situation, rather than obtaining precise quantitative data. The field survey results are as follows:

**1. Socio-Demographic Profile**

**TABLE 20. Average Annual Family Income (May 2004)**

INCOME CLASS	TENANTS		LANDOWNERS		TOTAL	
	No.	%	No.	%	No.	%
Under P10,000	3	10.71	1	3.57	4	14.28
10,000 - 14,999	1	3.57	2	7.14	3	10.71
15,000 - 19,999	1	3.57	4	14.28	5	17.86
20,000 - 29,999	5	17.86	2	7.14	7	25.00
30,000 - 39,999	4	14.28	1	3.57	5	17.86
40,000 - 49,999	1	3.57	1	3.57	2	7.14
50,000 - 59,999						
60,000 & above			2	7.14	2	7.14
<b>TOTAL</b>	<b>15</b>	<b>53</b>	<b>13</b>	<b>47</b>	<b>28</b>	<b>100</b>

Note: Based on Farm in the Sample Barangays within the LAMP Prototype Areas

The average annual family income of the respondents is based on farm only. **(Table 20)** In the case of a tenant family, the three-year average gross revenues generated from palay or copra produce sold at farm gate prices comprise their average annual family income. Off-farm source(s) of income of the tenant family is/are not factored in (e.g. money given by tenants employed offspring[s]).

In the case of a landowner family, the compensation or harvest share (such as 50-50 for coconut and for fixed share rental for rice) comprise their average annual family income. Again, off-farm sources of income of the landowner family are not factored in. (e.g. OFW remittances)

About 14% of the total number of respondents belongs to the bottom income class of under P 10,000. In this income bracket, the 10% represents coconut tenants and the balance of 4%, coconut landowners. In the case of coconut tenants, their present occupation is also their only means of livelihood. But in the case of coconut landowners, this small amount of compensation or harvest share is generally supplemented by other income source(s), agricultural or otherwise.

Within the income classes ₱ 20,000-P 29,999 and P 30,000-P 39,999 respectively, more tenant families, rather than landowner families are found. About 43% of the total number of respondents belonged to these income brackets. This is due to the fact that, in absolute numbers, there are more tenants than landowners. This is also due to the fact that these income ranges correspond to the higher monetary returns accruing to the more productive rice tenants compared with the economically passive rice landowners.

The apex income class of ₱ 60,000 and above is the exclusive bracket of relatively big landowners who comprise about 7% of the total number of respondents. This includes the two landowners who qualify for the top bracket, and even approach the ₱120,000-income level.

It should be noted that Eastern Visayas (Samar-Leyte Area) is the country's poorest region where the average family income in 1997 was only ₱ 67,772. (NSO Family Income and Expenditure Survey [FIES] of 1997). Overall, based on farm incomes, 26 out of 28 respondents (93 %) fall even below the said average family income of Eastern Visayas. The income situation would be worse if it were compared with the 1997 national average family income of ₱ 123,168. And this same income situation would be worst if it were compared with the 2000 national average family income of ₱ 144,039.

The poverty threshold of ₱13, 916.00 (using 2000 estimates), place seven respondents barely above or right below this line (24 % of the total number of respondents). Of the seven respondents, these include three old tenants and three old landowners. The remaining one respondent is a middle-aged tenant who is apparently the poorest of the 28 respondents.

Age and gender profile of respondents is provided by **Table 21**. Among the tenant respondents, males outnumber the females (9:6). Male tenant respondents range from age bracket 36-40 to age bracket 76-80, but the sizeable number of males was found at age bracket 61-65. Female tenant respondents span from age bracket 41-45 to age bracket 76-80, and are evenly dispersed the brackets between.

Among the landowner respondents, the females outnumber the males (8:5). Male landowner respondents range from age bracket 46-50 to 76-80, but are significantly grouped at age bracket 61-65. Female landowner respondents span from age bracket 25-30 to age bracket 86-90, and are significantly clustered at age brackets 46-50 and 76-80 respectively.

Overall, respondents are clustered at age bracket 46-50 (21 percent), age bracket 61-65 (25%) and age bracket 76-80 (18%). The age gender profile shows that the bulk of the respondents, that is 57% (16 out 28) are quite physically productive from age bracket 46-50 to that of 61-65.

In the subsequent age brackets (especially at 76-80), the diminished physical activity of the respondents does not reduce their exercise of authority, as long as they retain their mental faculties. This is very evident in the case of the landowners.

**TABLE 21. Age and Gender of Respondents (May 2004)**

AGE	TENANTS						LANDOWNERS						TOTAL	
	Male		Female		Total		Male		Female		Total			
	No.	%	N	%	N	%	N	%	No	%	N	%	No.	%
25 – 30									1	3.57	1	3.57	1	3.57
31 – 35														
36 – 40	1	3.57			1	3.57							1	3.57
41 – 45			1	3.57	1	3.57							1	3.57
46 – 50	2	7.14	1	3.57	3	10.71	1	3.57	2	7.14	3	10.71	6	21.43
51 – 55									1	3.57	1	3.57	1	3.57
56 – 60			1	3.57	1	3.57	1	3.57			1	3.57	2	7.14
61 – 65	4	14.28			4	14.28	2	7.14	1	3.57	3	10.71	7	25.00

66 – 70			1	3.57	1	3.57							1	3.57
71 – 75	1	3.57	1	3.57	2	7.14							2	7.14
76 – 80	1	3.57	1	3.57	2	7.14	1	3.57	2	7.14	3	10.71	5	17.86
81 – 85														
86 – 90									1	3.57	1	3.57	1	3.57
TOTAL	9	32.14	6	21.43	15	53	5	17.86	8	28.57	13	47	28	100

As gleaned from **Table 22**, overall, respondents who had three to four dependents accounted for nearly 36 percent of the respondent’s total number.

Tenants whose dependents range from three to four represent 25% of the total number of respondents.

Landowners who have one to two dependents represent about 18% of the respondent’s total number.

The “dependents” refer to those under 15 years and over 64 years, who are subject to sustenance by those in the economically productive ages (15 to 64 years) in the population. Apparently, those who are economically disadvantaged (tenants) have more persons to support, while those who are economically well-off landowners have fewer people to sustain.

**TABLE 22. Dependents (May 2004)**

NO. OF DEPENDENTS	TENANTS		LANDOWNERS		TOTAL	
	No.	%	No.	%	No.	%
0	2	7.14	4	14.28	6	21.42
1-2	3	10.71	5	17.86	8	28.57
3-4	7	25	3	10.71	10	35.71
5-6	2	7.14	1	3.57	3	10.71
7-8	1	3.57			1	3.57
TOTAL	15	53	13	47	28	100

Occupation profile of respondents shown in **Table 23** underscores the primacy of farming among the respondents in the prototype areas. Tenant respondents who are full-time farmers comprise about 39% of the total number of respondents.

One tenant respondent, serves as a barangay official, (represents about 4% of the total number of respondents)

One landowner respondent, works as a full-time farmer, (represents about four percent of the total number of respondents)

Landowner respondents exhibit more flexibility in assuming other occupations compared with tenant respondents.

**TABLE 23. Occupation (May 2004)**

OCCUPATION	TENANTS		LANDOWNERS		TOTAL	
	No.	%	No.	%	No.	%
1. Barangay Official	1	3.57	1	3.57	2	7.14
2. Farmer	11	39.28	1	3.57	12	42.86
3. Administrator			1	3.57	1	3.57
4. OFW			1	3.57	1	3.57
5. Retiree			2	7.14	2	7.14
6. None	3	10.71	7	25	10	35.71
<b>TOTAL</b>	<b>15</b>	<b>53</b>	<b>13</b>	<b>47</b>	<b>28</b>	<b>100</b>

As depicted in **Table 24**, the distribution of respondents according to crops planted underscored the importance of coconut monoculture and palay-coconut intercropping. Most of the respondents were focused on coconut planting, as indicated by 39 percent of the total number of respondents.

Another set of respondents preferred the combination planting of palay (principal) and coconut (auxiliary), as expressed by about 32% of the respondent's total number.

**TABLE 24. Distribution of Respondents According to Crops Planted (May 2004)**

CROPS PLANTED		TENANTS		LANDOWNERS		TOTAL	
Principal	Auxiliary	No.	%	No.	%	No.	%
1. Palay	Coconut	3	10.71	6	21.43	9	32.14
2. Coconut	Palay	2	7.14	1	3.57	3	10.71
3. Palay		4	14.28	1	3.57	5	17.86
4. Coconut		6	21.43	5	17.86	11	39.29
<b>TOTAL</b>		<b>15</b>	<b>53</b>	<b>13</b>	<b>47</b>	<b>28</b>	<b>100</b>

Thus, the socio-demographic profile of the respondent tenants/ landowners in the prototype areas is as follows:

- 26 out of 28 respondents or 93% had an average annual family income below that of the 1997 Eastern-Visayas average figure (₱67,772.00) as well as that of the 1997 national average family income (₱123,168.00);

- The average family incomes of all the 28 respondents fall below the 2000 national average family income of ₱144,039;
- 7 out of 28 respondents or 24% were below the poverty threshold of ₱13,916.00;
- Overall, the male and female respondents were mostly within the age bracket 61-65 years old, followed by the age bracket 46-50 years old;
- The economically disadvantaged respondents had more dependents to support (3-4) compared with the economically well-off interviewees (1-2);
- Small-scale farming was the primary occupation of all respondents; and
- Coconut mono-culture and intercropping of palay and coconut were the prevalent forms of cropping patterns

## 2. Tenancy Profile

The tenurial status/type of agreement entered into by respondents is shown in **Table 25**. Share tenancy that is unwritten is entered into by 16 out of 28 respondents, representing 57 percent of the total number of interviews.

Leasehold (75-25) that is written is contracted by 12 out of 28 respondents, accounting for 43 percent of the total number of interviews.

**TABLE 25. Tenurial Status / Type of Agreement (May 2004)**

TENURIAL STATUS	TYPE OF AGREEMENT				TOTAL	
	Written		Unwritten		No.	%
	No.	%	No.	%		
1. Share Tenancy			16	57	16	57
2. Leasehold (75-25)	12	43			12	43
3. Others						
<b>TOTAL</b>	<b>12</b>	<b>43</b>	<b>16</b>	<b>57</b>	<b>28</b>	<b>100</b>

The manner of establishing an existing tenurial arrangement is depicted in **Table 26**. Direct negotiation between tenants and landowners accounts for about 21% of the manner of establishing tenurial arrangement. Succession by tenants and landowner from their predecessors-in-interest is accounted by about 36%. DAR mediation between tenants and landowners accounts for about 43%.

**TABLE 26. Manner of Establishing the Existing Tenurial Arrangement (May 2004)**

MANNER OF ESTABLISHING	TENANTS		LANDOWNERS		TOTAL	
	No.	%	No.	%	No.	%
1. Direct Negotiation	4	14.28	2	7.14	6	21.43

2. Succession	4	14.28	6	21.43	10	35.71
3. Through DAR Mediation	7	25	5	17.86	12	42.86
TOTAL	15	57	13	43	28	100

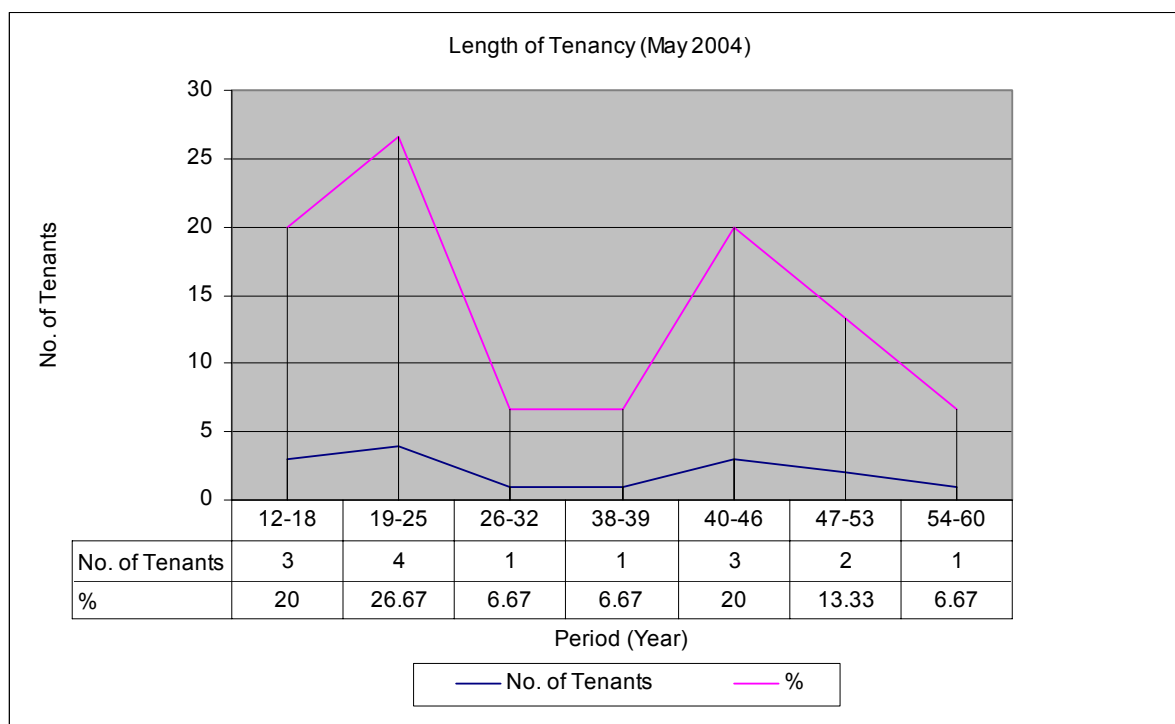
The sharing arrangement between tenants and landowners in consonance with crops planted (viz. palay and rice) is presented in **Table 27**. Share tenancy in the form of a 50-50 arrangement is practiced in coconut areas by about 56% of the respondents. Leasehold (fixed rental) in the form of the mandatory 75-25 arrangement is practiced (rice,) areas by 15 percent of the respondents.

**TABLE 27. Sharing (May 2004)**

SHARING ARRANGEMENT	PALAY		COCONUT		TOTAL	
	No	%	No.	%	No.	%
A. Share Tenancy						
1. 50 – 50			23	57.50	23	57.50
2. 60 – 40						
B. Leasehold-Fixed Rental						
1. 75 – 25	17	42.50			17	42.50
TOTAL	<b>17</b>	42.50	<b>23</b>	57.50	<b>40</b>	100

The length of tenancy borne by tenant farmers is shown in **Figure 2**. The bulk of the respondents aver that 26-60 years make for the period of tenancy borne by tenant farmers. During this period under consideration (ca. 1944-2004), there is practically no change in the predominantly share, tenancy set-up.

**Figure 2. Length of Tenancy (May 2004)**



The recipients of landowner’s share/schedule of delivery are described in **Table 28**. Nearly 86% of the respondents said that the landowners personally receive their shares from their tenants upon harvest.

About 11% of the same respondents aver that designated administrators receive the shares of landowners from tenants upon harvest.

About three percent of these respondents disclose that the relatives of landowner’s receive from tenants the landowner’s share upon harvest.

**TABLE 28. Recipients of Landowner’s Share / Schedule of Delivery (May 2004)**

RECEIPIENTS OF LANDOWNER’S SHARE	SCHEDULE OF DELIVERY						TOTAL	
	Annually		Bi-Annually		Upon Harvest		No.	%
	No.	%	No.	%	No.	%		
1. Landowner					24	85.71	24	85.71
2. Administrator					3	10.71	3	10.71
3. Relatives					1	3.57	1	3.57
TOTAL					<b>28</b>	100	<b>28</b>	100

Frequency/reasons for default in delivery of landowner's share are represented in **Table 29**. About 89% of the total number of respondents state that tenants do not incur defaults in the delivery of landowner's share. The remaining 11% of the same respondents say that there are tenants who do incur defaults in delivering their landowner's share.

About 7% of these respondents mentioned that tenants had defaulted once due to loss of farm animal.

Lastly, about three percent of the same respondents say that tenants had committed defaults several times but for unclear reasons.

**TABLE 29. Frequency/ Reasons for Defaults in Delivery of Landowner's Share (May 2004)**

TYPE OF TENANT	No.	%
A. Without Default	25	89.29
B. With Default		
<i>No. of Defaults / Reasons:</i>		
1. Once	2	7.14
Loss of farm animal.		
Money was used for maternity expenses.		
2. Several Times	1	3.57
Landowner has no idea.		
<b>TOTAL</b>	<b>28</b>	<b>100</b>

Frequency/Nature of assistance provided to tenants by landowners is depicted in **Table 30**. Nearly 79% of the respondents expressed the view that the typical landowner does not provide material aid to tenants by guaranteeing loans, lending money and providing food to farm laborers during harvest.

**Table 30. Frequency/Nature of Assistance (May 2004)**

TYPE OF LANDOWNER	No.	%
A. Without Assistance	22	78.6
B. With Assistance	6	21.4
1. Guarantees loans		
2. Lends money		
3. Provides food to the farm laborers during harvest		
<b>TOTAL</b>	<b>28</b>	<b>100</b>

The tenancy profile therefore discloses the following important features:

- Share tenancy which is essentially unwritten has persisted as the main tenurial arrangement (57%); while leasehold tenancy is appears merely as an alternative tenurial arrangement (43%);
- Tenurial arrangements were established by means of direct negotiation (21%); succession (36%); and DAR mediation (33%);.
- Share tenancy in the form of 50-50 arrangement was prevalent in coconut production (58%); leasehold-fixed rental in the form of 75-25 arrangement was followed in palay production (42%);
- Almost 50% of the respondent tenants had borne their tenancy for 30 years or more;
- The landowners themselves were the principal recipients of the lease rentals or farm produce shares given by their tenants;
- 89% of the tenants did not default in delivering the landowner's share; and
- 79% of the tenants did not seek the assistance of their landowners.

### 3. Problems and Recommendations

Problems in tenancy relations arising from the interviews are summarized in **Table 31**. Among the tenant respondents, 47% express the view that tenancy relations are not all problematic.

However, a slightly bigger 53% of tenant respondents aver the problematic nature of agricultural tenancy. A tenants' list of problems pertaining to tenancy relations is included.

Among the landowner respondents, 62% express the view that tenancy relations are not all problematic.

At the same time, 38% of the landowners aver the problematic nature of agricultural tenancy. Their list of tenancy-related problems is included

**TABLE 31. Problems in Tenancy Relations (May 2004)**

<b>PARTIES/ PROBLEMS</b>	<b>No.</b>	<b>%</b>
I. TENANTS	<b>15</b>	100
A. Not Problematic	7	47
B. Problematic	8	53
1. Full Shouldering of farm expenses by tenants		
2. No written tenancy agreement		
3. Difficulty in delivering the required quality of palay (dry and clean) as landowner's share		
4. Installation of another tenant over a portion of the landholding		
5. Questionable succession of landowner		

6. Landowner not easily approachable for assistance		
7. Forced harvesting (coconut)		
II. LANDOWNERS	<b>13</b>	100
A. Not Problematic	8	62
B. Problematic	5	38
1. Subleasing by tenants without landowner's consent		
2. Unpaid irrigation fees by tenants		
3. Incomplete delivery of landowner's share		
4. Non-compliance by tenants with required quality of palay as landowner's share		
5. Abandonment by tenant		
6. Unsatisfactory tending/ tilling of land by tenant		

Recommendations by the respondents on securing tenancy rights are set forth in **Table 32**. Tenant respondents are unanimous in batting for written tenancy agreements - underscoring their 53% approval rating for this important reform measure. Landowner respondents give their 18% approval rating for the same measure.

Overall, the recommendation to put in place written tenancy agreements received 71% approval rating from the body of respondents. Moreover, a small segment of landowner respondents (about 3%) is amenable to giving a portion of their landholding to tenants. Finally, a significant section of landowners (25%) do not offer, or do not react to the recommendations on securing tenancy rights.

**TABLE 32. Recommendations on Securing Tenancy Rights (May 2004)**

RECOMMENDATIONS	TENANTS		LANDOWNERS	
	No.	%	No.	%
1. Written tenancy agreement.	15	53.37	5	17.86
2. Give a portion of the landholding to the tenants.			1	3.6
3. No recommendation.			7	25
<b>TOTAL</b>	<b>15</b>	<b>53.37</b>	<b>13</b>	<b>47</b>

The problems and recommendations on tenancy relations may be summarized as follows:

- Most of the tenants viewed their relations with landowners as problematic (53%);
- On the other hand, most of the landowners viewed their relations as not problematic (62%); and
- The recommendation to come up with a written tenancy agreement received a 71% approval rating from the respondents.

## G. Validation of Tenancy Issues and Recommendations

To validate the results of the interviews of the tenants and the landowners in three municipalities – San Miguel, Sta. Fe, and Pastrana – particularly the problems arising in tenancy relations, a Focus Group Discussion on Tenancy in LAMP areas was held on May 30, 2004 at Pastrana, Leyte. A total of ten (10) participants registered for the FGD, seven tenants and three landowners. During the FGD, certain guide questions were posed to both the tenants and landowners for the purpose of eliciting recommendations on the most acceptable measures of securing tenancy rights, to wit:

- Is it acceptable for the tenancy relations to be covered by a written agreement executed through the DAR?
- Is the 75-25 sharing arrangement in favor of the tenant acceptable?
- Is it acceptable for the tenancy agreement to be annotated on the land title?
- Should landowners provide land to their tenants?
- What can you recommend to address the tenancy problems presented?

The reactions and recommendations of the participants were duly recorded in the FGD Minutes of Proceedings attached as **Annex “F”**. The highlights are summarized below:

### 1. Tenants' Perspective

#### Problems (Please refer to Table 31)

Shouldering full farm expenses is indeed a common problem among tenants of coconut lands. However, some landowners of coconut lands shoulder half of expenses for harvesting and transportation.

The tenants agreed that lack of security of tenure or absence of a written tenancy agreement is a major concern. Most of them in fact have no written tenancy agreements with the landowners.

Difficulty in delivering the required quality of palay (dry & clean) as landowner's share during wet season is an important problem. Some landowners do not understand the difficulty of drying palay during the rainy season and do not accept their rent so that payment doubles for the next harvest.

The rest of the problems were considered of secondary importance, to wit: 1) questionable succession of landowners; 2) installation of another tenant over a portion of the landholding; 3) unapproachable landowners; and 4) forced harvesting of coconuts.

Some tenants acknowledged that their landowners have asked them to harvest coconuts prematurely, but they simply refused to do. Tenants were unwilling to ask help from their landowners. They do not want to have “*utang na loob*” (debt of gratitude) or it might be a cause for their ejection.

Additional problems were mentioned such as the refusal of landowners to allow tenants to repair and improve their houses with permanent materials and to replace old coconut trees. The landowners feel that to allow tenants to make such repairs would prevent them from removing the tenants and that replanting of old coconut trees could result in changing the sharing arrangement in favor of the tenant.

### Recommendations

The tenants and landowners recommended that there should be a written leasehold contract or agreement executed through the DAR to govern tenancy relations. The right to replant coconut trees, to undertake house repairs and improvements, and similar concerns should be stipulated in the agreement.

The 75-25 sharing arrangement for palay is acceptable to majority of the tenants. But to one participant, this would be unfair to the landowner of coconut lands. A 50-50 sharing arrangement for coconut lands appears acceptable.

Annotation of the tenancy agreement be on the land title was recommended to assure the security of tenants even if the landowner sells the landholding.

Giving a portion of the landholding to the tenants appears feasible; but to expect landowners to give their entire landholdings to their tenants is next to impossible.

Both tenants and landowners should be made aware of their rights and obligations so that conflicts can be avoided.

## **2. Landowners' Perspective**

### Problems (Please refer to Table 31)

Subleasing by tenants without the landowner's consent is widely practiced. The most common is subleasing within the tenant's family, especially when the tenant gets older.

Payment of irrigation fees is the responsibility of the tenants and some landowners have indeed encountered this problem.

The problem is not incomplete delivery but merely delayed delivery of landowner's share. However, the reasons for the delay are mostly justifiable (e.g., sickness in the family, school expenses, and other contingencies). Landowners are considerate to their tenants as long as the delayed rentals are eventually covered.

Difficulty of tenants in delivering dry and clean palay to the landowner during wet season is understandable because it is almost impossible for them to dry and clean palay.

Abandonment by tenants rarely happens because they have nowhere else to go and farming is their only source of income.

Unsatisfactory tending/ tilling of land usually happen in coconut lands. Tenants only wait for the harvest season but never tend the land or take care of the coconut trees. However, in rice lands tenants cultivate their lands properly, otherwise, their harvest will decline.

The landowners cited additional problems such as: dishonesty of some tenants who do not inform landowners of the exact quantity or volume of harvest, and the failure of tenants to inform landowners of the schedule of harvest especially in coconut lands and the planting of additional crops other than those agreed upon.

### Recommendations

Most landowners agreed on the need for a written tenancy agreement or leasehold contract to be executed through the DAR. In fact, one landowner already has such an agreement. Problems will be addressed if the tenancy relation is covered by a written agreement and the terms and conditions thereof are strictly followed.

The 75-25 sharing is acceptable only in rice lands where the tenants shoulder the farm expenses. In coconut lands, however, the landowners prefer a 50-50 or 40-60 sharing, in favor of the landowner, after deducting farm expenses.

Some landowners strongly objected to annotating the tenancy agreement on their title. They said that it would burden their title and further embolden tenants.

Giving a homelot to the tenant appears acceptable, but the idea of providing the tenant a farmlot of his own was strongly objected to.

It was also suggested that there is a need to educate tenants and landowners of their rights and obligations to avoid these problems.

### **F. Legality of Issuance of Free Patents to Absentee-Claimants**

In the course of implementing the mass-titling project in Leyte, LAMP encountered untitled A & D lands that are tenanted where the claimants do not actually occupy and reside on the land much less cultivate the same. In such cases, the free patents were issued in favor of the absentee-claimant, but concerns have been raised whether the practice is legal or not.

Under Presidential Decree (PD) No. 152, promulgated on March 13, 1973, the employment or use of share tenants in complying with the requirements of law regarding entry, occupation, improvement and cultivation of public lands is prohibited. The pertinent provisions of PD 152 read as follows:

1. It shall be an essential condition in every application for, or grant of, agricultural lands of the public domain under the provisions of Commonwealth Act No. 141, as amended, that the applicant or his transferee shall enter and work upon, improve and cultivate the land by HIMSELF within the periods prescribed for the various modes of concession under the said Act.

2. The employment of or use of share tenants in whatever form for purposes of complying with the requirements of the Public Land Act regarding entry, occupation, improvement and cultivation, is hereby prohibited. Any violation hereof shall constitute a ground for the denial of the application, cancellation of the grant and forfeiture of improvements on the land in favor of the government.

3. Lands covered by application or grants that have been rejected, cancelled or revoked for violation of this Decree shall be disposed of to other qualified persons who will till the land themselves but the share tenant actually tilling the land shall be entitled to preferential right to acquire the portion actually tilled by him if he is not otherwise disqualified to apply for the same under the provisions of the Public Land Act. (Underscoring supplied)

Does the issuance of free patents to absentee-claimants conform to the letter and spirit of the law?

One view says PD 152 does not apply to applications for free patent, only to homestead patent. A homestead patent pertains to a grant of public land to persons seeking to establish and maintain agricultural homes on condition of actual, continuous, and personal occupancy of the area as a home including cultivation and improvement of the land. (DENR Manual for Land Disposition, p. 1). In a homestead application, the land is vacant whereas in a free patent application, the land is already occupied and cultivated. The homestead applicant is required to enter an agricultural land of the public domain, take possession of the same, improve and cultivate at least one-fifth thereof for a minimum of one year before a patent may be issued in his favor. (CA 141, sec. 12 – 14). These requirements do not apply to free patent.<sup>5</sup>

The other view says that there is no such distinction in PD 152. Where the law does not distinguish, we should not distinguish. Moreover, the free patent law requires that the applicant must have “continuously occupied and cultivated by himself or through his predecessors-in-interest a tract or tracts of agricultural public lands subject to disposition”. (CA 141, as amended by RA 6940). This means that the applicant must have entered, occupied, improved and cultivated the land throughout the statutory period required (30 years) for his claim to ripen into a free patent. He or she must occupy and cultivate the land “by himself”. The only constructive possession that can be considered in his or her favor is that by “predecessors-in-interest” and not by third parties. The **DENR Manual for Land Disposition** in fact explicitly provides that in applications for free patent, the land investigator should ascertain “**whether the applicant used share tenants to cultivate the land in violation of PD 152**” (p.16).

Investigation of this issue disclosed that then Secretary of Agriculture and Natural Resources, Arturo R. Tanco Jr., upon recommendation of then Acting Director of Lands, Ramon N. Casanova, issued **DANR Lands Administrative Order (LAO) No. 27-73** on November 8, 1973, promulgating the rules and regulations implementing PD 152. It provides that as a general rule, PD 152 shall be “applicable to homestead sales or lease application for agriculture purpose... It shall however not apply to land grants under the free patent provisions of the Public Land Act.” The pertinent provisions of the implementing rules are as follows:

- a. Scope [of] Decree – As a general rule Presidential Decree No. 152 shall be applicable to homestead, sales or lease applications for agricultural purposes filed with the Bureau of Lands after the promulgation thereof on March 13, 1973. It shall also apply to homestead, sales or lease applications filed before March 13, 1973

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<sup>5</sup> The study team does not see any inconsistency between the provisions on homestead and free patents. In the first place, in a homestead patent, the land is vacant and the applicant is authorized by the DENR to take possession thereof upon payment of an entry fee (CA 141, sec. 13). In a free patent, the applicant has continuously occupied and cultivated by himself or through his predecessors-in-interest the land for at least 30 years. (CA 141, as amended by RA 6940, sec. 44). Second, both homestead and free patents presuppose or require that there are no other adverse claims on the land. In case there are conflicting claims, the DENR (or LAMP) will have to make a determination who has a better right to the land between the homestead applicant and the free patent applicant. For instance, does the homestead applicant have the requisite authority to enter the land? Who issued it and under what circumstances? Is he a tenant? If yes, then his status prevents him from asserting ownership claim over the land under the principle of estoppel, i.e., that a party is prevented by his own acts from claiming a right to the detriment of the other party who was entitled to rely on such conduct and has acted accordingly (BLACK'S LAW DICTIONARY, 5<sup>th</sup> ed., p, 494). A tenant necessarily concedes that ownership of the land belongs to another.

where the applicants have not yet acquired any vested right to the land applied for as hereinafter provided. **It shall however not apply to grants under the free patent provisions of the Public Land Act.**

- b. Changes in Forms – The existing forms used for homestead, sales and lease application, investigation reports, the approval or award, the patent or lease contract shall therefore, be modified to conform with the requirements of Presidential Decree No. 152. The application forms shall contain an undertaking on the part of the applicant, and the order of approval and award shall contain a condition to the effect that the applicant or grantee shall not employ or use tenants for purposes of complying with requirements of law regarding entry, occupation and cultivation; and that in the case of violation thereof the application shall be disposed of to other qualified persons with preference given to tenant who has been employed by the applicant or grantee.
- c. Homestead, sales or lease applications filed by persons who have used tenants and had already acquired a vested right to the land applied for before March 13, 1973, shall not be covered by Presidential Decree No. 152. For purposes of this Order, an applicant is deemed to have acquired a vested right to the land if, before March 13, 1973, the following conditions are present:
  - (1) The application had already been approved or in case of sale or lease, the land had already been awarded to the applicant or had already been auctioned and is pending formal award in favor of the successful bidder, unless there has been delay in the issuance or entry of the order of approval or award caused by circumstances beyond the control of the applicant; and
  - (2) The applicant had, with the use of tenants, already complied with the requirements of the Public Land Act relative to entry, occupation as well as cultivation, including the accomplishment of final proof papers in the case of homestead, or payment of installments or rentals in the case of sales or leases.
- d. Application falling under the above category may be processed and the corresponding patents or lease contracts issued to applicants. Similar action shall be taken on all free patents applications. The issuance of patents shall however, be without prejudice to the rights of tenants to acquire ownership of the land they till under Presidential Decree No. 27 dated October 21, 1972. (Emphasis supplied).

Of late, however, Director Casanova has expressed the view that a free patent applicant may be disqualified if he or she employed or used a tenant after the effectivity of PD 152 on March 13, 1973.<sup>6</sup> He argues that public policy and the spirit behind the issuance of PD 152 is against tenancy. Indeed, without the implementing rules (LAO 27-73), the language of PD 152 appears to support his view. The recitals of PD 152 clearly state that it was issued “to abolish tenancy and all its attendant evils, and to emancipate the tenant from the bondage of the soil so as to secure him a dignified existence” (1<sup>st</sup> whereas clause), as well as to discourage or prevent “several applicants for, or holders of, lands of the public domain (who) do not occupy and cultivate the lands themselves but have resorted to the pernicious practice of employing or using tenants for the purpose of complying with the entry, occupation and cultivation requirements of the Public Land Act” (2<sup>nd</sup> whereas clause).

The study team is of the opinion that the validity of free patents issued in favor of absentee-claimants does not depend on PD 152 but on whether the tenant was employed before or after the lapse of the 30-year period for occupation or cultivation as required

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<sup>6</sup> Director Casanova expressed this view during the presentation of this Report at the LAMP PIO I in Palo, Leyte on August 9, 2004.

under the free patent law. If the tenant was employed before the lapse of the 30-year period, the patent is defective; however, if he or she was employed after the lapse thereof, the patent is valid.

Thus, regardless of whether the tenant was employed before or after the effectivity of PD 152 on March 13, 1973, if said employment occurred **before the lapse of the 30-year period**, the free patent issued to the absentee-claimant is defective. The reasons are as follows:

- The land is still public when the tenant was employed, hence, the applicant cannot claim any vested right thereon;
- The free patent law requires personal occupation and cultivation by the applicant or through his or her predecessors-in-interest, but not through third parties; and
- Public policy is against tenancy and in favor of owner-cultivatorship of family size farms.

On the other hand, if the tenant was employed **after the lapse of the 30-year period** regardless of whether said employment occurred before or after the effectivity of PD 152 on March 13, 1973, the free patent issued to the absentee-claimant is valid. The reasons are as follows:

- The land has become private and the applicant has acquired vested right thereon;
- The tenant had cultivated the land “by himself or through his predecessors-in-interest” pursuant to the requirement of the free patent law; and
- The public policy against tenancy was not violated when applicant acquired imperfect title over the land.

Hence, the question whether the free patents issued under LAMP in favor of absentee-claimants are valid or not will ultimately depend on whether the tenants were employed before or after the lapse of the 30-year period. In the meantime, however, the patents enjoy the presumption of validity. The DENR officials who processed, approved and issued the same are presumed to have acted regularly in the performance of their official duties. Findings and conclusions of government officials warrant the presumption of regularity and correctness in the absence of proof to the contrary. (*La Campana Food Products, Inc. vs. Court of Appeals*, 221 SCRA 770 [1993]). Unless one can show with sufficient evidence that there were irregularities or violations of law or public policy in granting these patents, they are deemed validly issued.

Corollarily, the issue of whether tenanted land applied for free patent may be awarded to the tenant would depend on whether the applicant has acquired vested right thereon. If the applicant has already acquired such right, the land cannot be awarded to the tenant. However, if the applicant has not yet acquired vested right, hence, disqualified for a free patent, the land may be awarded to the tenant pursuant to PD 152. Of course, nothing prevents the landowner from voluntarily transferring the land to the tenant through any of the modes of land acquisition and distribution under CARP such as Voluntary Land Transfer/ Direct Payment Scheme (VLT/ DPS) or Voluntary Offer to Sell (VOS). But in cases where the free patent is validly issued over tenanted land, security of tenure for the tenant could be ensured through formalization of leasehold relations under DAR.

The debate on the scope of applicability of PD 152 has, at the very least, shown the need for clarificatory or supplementary guidelines for PD 152.

## V. SECURING TENANCY RIGHTS IN FREE PATENT AREAS

### B. Rationale and Legal Basis

The need to secure the rights of tenants in free patent areas is an imperative for LAMP in light of its long term goals to alleviate poverty and enhance the country's economic growth by improving security of land tenure and efficiency of land markets.

As a State policy, the welfare of landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization. The establishment of economic-size farms shall be the basis of Philippine agriculture. (RA 6657, sec. 2).

Thus, to protect and improve the tenurial and economic status of the farmers in tenanted lands under the retention limit and lands not yet acquired under the Comprehensive Agrarian Reform Law, the DAR is mandated to determine and fix immediately the lease rentals thereof (RA 6657, sec. 12). These mandates extend to tenanted free patent areas.

To implement these mandates, short and long term measures may be considered. Short term measures are those which can be carried out within the framework of existing laws, while long term measures would require changes or amendments therein.

### B. Short Term Measures

The short-term measures that may be implemented by LAMP to secure tenancy rights in free patent areas are as follows:

1. LAMP adjudicators should strictly comply with the requirement to ascertain **“whether the applicant used share tenants to cultivate the area”** (LAMP Field Operation Manual, Vol. 1, p. 177) before issuance of the free patent.
2. Formulate clarificatory/ supplementary guidelines on PD 152 for issuance by the DENR Secretary.
3. Establish close coordination with DAR for the implementation of intensified leasehold operations in tenanted free patent areas. Collaboration with DAR at the municipal and provincial levels should be strengthened and the provision of manpower, financial and material support to enable the agency to pursue leasehold activities in LAMP areas should be considered, including the conduct of joint trainings and regular sharing of experiences among the LAMP and DAR personnel.
4. Facilitate the turnover to DAR of areas in excess of the five –hectare retention limit which are covered by free patent applications and are tenanted pursuant to Joint DAR-DENR Memorandum Circular No. 2003-01, Series of 2003, for distribution to tenant farmers.
5. Undertake intensive information, education and communication (IEC) campaign on the rights and obligations of tenants and landowners. Include in IEC campaign the various modes of land acquisition and distribution for landowners who may wish to consider voluntarily placing their landholdings or portions thereof under CARP coverage in favor of their tenants.
6. Conduct baseline data gathering on tenancy situation at the community level prior to actual project implementation

Except for the formulation of clarificatory / supplementary guidelines for PD 152, these short-term measures may be incorporated into the LAMP systematic adjudication procedures as follows:

*1. Community Mobilization and Participation*

- Gather baseline tenancy data, e.g. location and area of tenanted lands, identities of claimants and tenants, existing crops, and tenancy arrangements;
- Complete land tenure profiling.

*2. Survey and Adjudication*

- Determine if land is tenanted or not during interview and ocular inspection;
- If untenanted, proceed with usual procedures in processing and approval of free patent applications;
- If tenanted, gather basic data on tenancy relations before proceeding with processing, review and approval of free patent in favor of claimant;
- If applied area is within retention limit (5 ha), issue free patent to claimant;
- If applied area exceeds retention limit (5 ha), turn over excess area to DAR for issuance of CLOA in favor of qualified beneficiaries subject to payment of just compensation to claimant;
- Forward to DAR Municipal Office data on tenancy for formalization of leasehold with tenant.

*3. Registration and Land Records Management*

- Register approved patents and issue to claimant;
- Annotate leasehold agreement on patent on file with ROD (to be undertaken by DAR Municipal Office [DAR AO 6 (2003), sec. 15.4]);

*4. Monitoring and Evaluation*

- Include progress of DAR leasehold operations in regular monitoring and evaluation of LAMP activities;
- Secure copies of leasehold contracts involving lands within LAMP areas issued with free patents under the Project.

**C. Long-Term Measures**

On the other hand, the proposed long-term measures to secure tenancy rights are as follows:

1. Include a provision in the revised free patent law disqualifying free patent applicants who employed or used tenants before the lapse of the period required for occupation and cultivation pursuant to the State policy to promote owner-cultivatorship of family size farms;
2. Amend Section 3 of PD 152 to allow the acquisition and distribution under CARP of rejected public land applications found to have violated PD 152 in favor of tenant farmers and other qualified beneficiaries. The amendment should also be included in the revised free patent law; and

3. Undertake policy review and analysis of Section 34 of RA 3844, which fixes the maximum amount lease rental at 25% of the average normal harvest for three agricultural years after deducting allowable expenses, as it applies to coconut lands in order to come up with a fair, equitable and effective arrangement between tenants and landowners.

## **VI. CONCLUSIONS AND RECOMMENDATIONS**

The study has confirmed through secondary and primary data that the extent of agricultural tenancy in the LAMP prototype areas in Leyte is quite significant. The practice is prevalent in lands planted to coconuts and palay - 70 % for coconut lands and almost 50% for rice lands.

While share tenancy has long been declared contrary to public policy and abolished by law, the practice has persisted to date in the prototype areas especially in coconut lands. Leasehold, which is the tenancy arrangement now mandated by law, is being followed mainly only in ricelands, and, in sugarlands as in the case of tenanted lands visited in Batangas.

The lack of security of tenure is the most common problem that tenants complain of, and to a lesser degree, the burden of shouldering farm expenses and the difficulty of delivering dry and clean palay to the landowner during wet season. To the landowners, subleasing by tenants without their consent is the most widespread problem besetting tenancy relations.

Both tenants and landowners agree that formalizing the tenancy relations through a written agreement executed with DAR's intervention would provide security of tenure to the tenant, while assuring landowners their share of the harvest. Providing land to the tenants is unacceptable to landowners; for tenants, it is a virtual impossibility.

On the validity of free patents issued in favor of absentee-claimants, the study has taken the view that the issue does not depend on PD 152, which prohibited the employment or use of share tenants in complying with the requirements of law regarding entry, occupation, improvement and cultivation of public lands, but on whether the tenant was employed before or after the lapse of the 30-year period for occupation and cultivation as required under the free patent law. If the tenant was employed before the lapse of the 30-year period, the patent is defective; however, if he or she was employed after the lapse thereof, the patent is valid.

In the meantime, however, the free patents issued by LAMP to absentee-claimants enjoy the presumption of validity. The burden of proof is upon him or her who claims that there were irregularities or violations in issuing such patents.

There is a need, finally, to simplify the requirements for free patent, remove its limitations/restrictions, and expand its scope to non-agricultural areas, among others, to make it a more viable mass land titling alternative.

In view of the foregoing, and to ensure that the broader goals and objectives of LAMP are realized in tenanted free patent areas, the following recommendations are hereby presented:

1. Implement the short and long term measures enumerated in the foregoing section (Part V [B] and [C]) designed to secure tenancy rights in free patent areas;
2. Incorporate additional changes in the revised free patent law, to wit: disqualifying applicants who employed or used tenants before the lapse of the period required for occupation and cultivation, distribution under CARP of free patent applications rejected for violation of PD 152 in favor of the tenants, and deleting the deadline for filing free patent applications and delegating the authority to fix such deadline as may be necessary to the President (Part III [E]);
3. Undertake more detailed and expansive tenancy survey and investigation in the LAMP areas to generate complete and reliable quantitative and qualitative data on tenancy therein that can be used for detailed operational or action planning;
4. Prepare a comprehensive program for leasehold operations in LAMP areas which shall identify the targets, activities, resources required, areas of complementation between LAMP and DAR, training needs in alternative dispute resolution, and other relevant information; and
4. Formulate a program for more extensive information, education and communication (IEC) campaign on the rights and obligations of tenants and landowners in the LAMP areas.

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**MAJOR TENANCY LAWS AND REGULATIONS**

<b>Law/ Regulation</b>	<b>Date Promulgated</b>	<b>Description/ Highlights</b>
RA 1199	August 30, 1954	<ul style="list-style-type: none"> <li>• Agricultural Tenancy Act of the Philippines</li> <li>• Tenants have the right to choose a leasehold tenancy arrangement. (Sec. 14)</li> <li>• Granted security of tenure to tenants (Sec.7 &amp; 49)</li> </ul>
RA 3844	August 8, 1963	<ul style="list-style-type: none"> <li>• Agricultural Land Reform Code</li> <li>• Declared agricultural tenancy as contrary to public policy and thereby abolished it (Sec. 4)</li> <li>• Leasehold applicable to all tenanted lands by operation of law (Sec.5)</li> <li>• Exception granted for fishponds, saltbeds, and lands principally planted to citrus, coconuts, cacao, coffee, durian, and other similar permanent trees at the time of the approval of the said Act (Sec. 35)</li> <li>• Provides for determination of lease rental (Sec. 34)</li> <li>• Granted security of tenure to tenants (Sec.7)</li> <li>• Grounds for dispossession of tenants (Sec. 36)</li> </ul>
RA 6389	September 10, 1971	<ul style="list-style-type: none"> <li>• Code of Agrarian Reforms of the Philippines</li> <li>• Agricultural share tenancy automatically converted to leasehold but exemption for certain landholdings remained (Sec.4)</li> </ul>
PD 27	October 21, 1972	<ul style="list-style-type: none"> <li>• Decreed emancipation of tenant-farmers by making them owners of land they till consisting of 5 ha if not irrigated and 3 ha if irrigated, subject to right of retention of landowner (7 ha) and payment of just compensation</li> <li>• Applicable to tenanted rice and corn lands</li> </ul>
PD 152	March 13, 1973	<ul style="list-style-type: none"> <li>• Prohibited employment or use of share tenants in complying with the requirements of law regarding entry, occupation, improvement and cultivation of public lands.</li> </ul>

Law/ Regulation	Date Promulgated	Description/ Highlights
EO 228	July 17, 1987	<ul style="list-style-type: none"> <li>• Farmer-beneficiaries deemed full owners as of Oct. 21,1972 of land acquired under PD 27. (Sec. 1)</li> <li>• Allowed transfer of ownership of land after full payment of amortizations (Sec. 6).</li> </ul>
RA 6657	June 10, 1988	<ul style="list-style-type: none"> <li>• Comprehensive Agrarian Reform Law of 1988</li> <li>• Repealed exemption granted for certain landholdings under Sec. 35, RA 3844 (Sec. 76), making leasehold applicable to all tenanted lands by operation of law.</li> <li>• Mandates DAR to determine and fix immediately the lease rental in tenanted lands under the retention limit and lands not yet acquired under RA 6657 (Sec. 12).</li> <li>• Agricultural lessees and share tenants as first in the order of priority of qualified beneficiaries entitled to be given land under CARP (Sec.22)</li> </ul>
DANR LAO 27-73	November 8, 1973	<ul style="list-style-type: none"> <li>• Rules and regulations implementing PD 152.</li> <li>• Provide that PD 152 applies only to homestead, sales or lease applications under the Public Land Act; it shall not apply to free patents (item 1[a]).</li> </ul>
DAR AO 6, Series of 2003	December 18, 2003	<ul style="list-style-type: none"> <li>• Rules and procedures governing leasehold implementation on tenanted agricultural lands</li> <li>• Rights and obligations of agricultural lessees and lessors (Sec. 6, 7, 9, &amp; 10)</li> <li>• Prohibitions on agricultural lessees and lessors (Sec. 8 &amp; 11)</li> <li>• Grounds for extinguishing tenancy relations (Sec. 26)</li> </ul>

**PROFILE OF SELECTED BATANGAS TENANTS WITH  
DAR LEASEHOLD CONTRACTS  
(May 6-7, 2004)**

Name/Age Of Tenants	Name of Landowner	Area of Farm (ha)	Location	Crops Planted	Date of Leasehold Contract/ Processing Term	Lease Rental (per crop year)	Remarks
1) Pablito Badillo/ 64 years old	Rosita Guevarra	1.8	Brgy. San Rafel, Sto. Tomas,	Coconut & Corn	April 23, 2001/ 1 month	25% of produce, @₱5,000	Tenant defaulted in one year lease rental due to sickness in family
2) Aniceta Villanueva/ 77 years old	Heirs of Sps. Natalio Lopez & Remedios Javier, rep. by Francisco Lopez	3.0	Brgy. Dao, Tuy	Sugarcane	Sept. 17, 2001/ 1 day	25% of produce @42 piculs sugar & 1,428 kg. molasses (₱369,212)	Relations with landowner amicable and without problems
3) Fernanda Lagrisola/ 73 years old	Heirs of Sinfroso Sanvictores now rep. by Rosemarie Llaguno	1.5	Brgy. Prenza, Lian	Palay	June 29, 2000/ 1 week	25% of produce @48 cavans @₱9,600	Tenant wants lower lease rental

Source: On-site interviews, May 2004

**PROFILE OF SELECTED BATANGAS LANDOWNERS WITH  
DAR LEASEHOLD CONTRACTS  
(May 6-7, 2004)**

Name/Age of Landowner	Name of Tenant	Area of Farm (ha)	Location	Crops Planted	Date of Leasehold Contract/ Processing Term	Lease Rental (per crop year)	Remarks
1) Rosita Guevarra 82 years old	Camilo Palomino	1.0	Brgy. San Rafel, Sto. Tomas,	Palay & Corn	April 23, 2001/ 1 month	25% of produce, @P2,000	Landowner complains of low rental and non-payment by tenant
2) Faustino Pose/ 65 years old	Leonida Pose	1.7117	Brgy. San Isidro, Lipa City	Palay, corn, Peanuts, soy beans & vegetables	July 30 2003/ 1 week	25% of produce @ P2,500)	Tenant awarded 1 ha thru VLT/DPS. CLOA issued Nov.7, 2003. Landowner retained 0.7 ha only
3) Gil Martinez	Gregorio de Padua	2.10	Brgy. Pook, Balayan, Batangas	Sugarcane	Oct. 17, 2001/ 1 month	25% of produce @38.28 piculs sugar & 1,072 kg molasses (P33,916 for sugar & P53,600 for molasses	Leasehold contract executed upon DAR mediation due to tenant's complaint

Source: On site interviews, May 2004

**ANNEX "D"**

**LIST OF TENANT- RESPONDENTS**  
**Santa Fe, San Miguel and Pastrana, Leyte**  
**May 26-27, 2004**

<b>Name of Tenant</b>	<b>Age</b>	<b>Address (Brgy./Municipality)</b>	<b>Crops Planted</b>
1) Iluminado Octa rep. by Salvacion Octa	61 60	San Juan/ Sta. Fe	Coconut & Lanzones
2) Melchor Narrido	39	San Roque/ San Miguel	Coconut
3) Salvador Olaya	79	Socsocon/ Pastrana	Palay
4) Benjamin Nobe	61	Socsocon/ Pastrana	Palay
5) Porferio Morbos	62	Jones/ Pastrana	Coconut
6) Danilo Amado	50	Capilla, Pastrana	Palay & Coconut
7) Loreto Bonifacio	65	Halaba/ Pastrana	Coconut
8) Romana Blones	74	Lukay/ San Miguel	Palay
9) Susan Olaya	47	San Roque/ Sta. Fe	Palay
10) Antonia Barredo	67	San Juan/ Sta Fe	Coconut
11) Erlinda Lasdoce rep. by Wenifredo Lasdoce	45	San Juan/ Sta. Fe	Palay
12) Francisco Gatela	75	Jones/ Pastrana	Palay & Coconut
13) Benjamin Bacus	48	Socsocon/ Pastrana	Palay
14) Consorcia Alvarez	76	Halaba/ Pastrana	Coconut
15) Lolita Palea	56	Capilla/ Coconut	Coconut

**ANNEX "E"**

**LIST OF LANDOWNER- RESPONDENTS  
Santa Fe, San Miguel and Pastrana, Leyte  
May 26-27, 2004**

<b>Name of Landowner</b>	<b>Age</b>	<b>Address (Brgy./Municipality)</b>	<b>Crops Planted</b>
1) Luz Lantajo	86	San Juan/ Sta. Fe	Coconut
2) Bernardo Lapidario rep. by Elvina Lapidario	62 60	Lukay/ San Miguel	Coconut
3) Bienvenido de la Cruz	60	Poblacion/ Pastrana	Palay & Coconut
4) Melania Gamalo	46	San Roque/ Sta. Fe	Palay & Coconut
5) Paulina Empillo	77	Poblacion/ Pastrana	Coconut
6) Francisco Camiller	50	Jones/ Pastrana	Palay & Coconut
7) Elisa Corpin rep. by Fe Blones	54	Lukay/ San Miguel	Palay & Coconut
8) Carolina Velasco	78	San Juan/ Sta. Fe	Coconut
9) Elizabeth Aribal	28	San Roque/ Sta. Fe	Palay & Coconut
10) Iluminada Villablanca	65	Poblacion/ Pastrana	Palay
11) Salvador Taña	65	Poblacion/ Pastrana	Palay & Coconut
12) Celia Ragasa	48	Poblacion/ Pastrana	Palay & Coconut
13) Delfin Espina	78	Cancaraja/ Pastrana	Palay & Coconut

LAMP Tenancy Study  
FOCUS GROUP DISCUSSION  
ON TENANCY IN LAMP AREAS  
Pastrana, Leyte  
May 30, 2004

**MINUTES OF PROCEEDINGS**

**I. Registration of Participants**

The registration of participants started at 9:00 a.m. A total of ten (10) participants registered for the FGD. The attendance sheets are attached as Annexes "A" & "A-1".

**II. Opening Ceremonies**

***A. Invocation***

The activity was formally opened with a prayer of thanksgiving and for guidance throughout the discussion, led by Mrs. Lydia Canillas of San Juan, Sta. Fe, Leyte.

***B. National Anthem***

The national anthem was conducted and led by Mrs. Asteria Marquez of Lukay, San Miguel, Leyte

***C. Overview of LAMP Project***

Mr. Lil Enaro, LAMP representative, gave a brief overview on the LAMP Project. He started with asking the participants whether they have participated in any LAMP activities from community meetings, witnessing survey activities, to processing and procuring titles as land claimants. All the participants gave affirmative responses. The speaker then discussed the objectives of LAMP - poverty alleviation and improving the land titling system through One-Stop-Shop. But as the project was carrying out its objectives, it encountered the existence of tenancy issues and problems in LAMP areas which may need to be addressed to meet the project's goals and objectives. Thus, a tenancy study is being conducted to look into this matter. The speaker also mentioned that the consultants of the study are Atty. Wilfredo Peñaflor and Mr. Romeo Bayle. The research assistants are Aileen Velarde and Eden Buñales who helped in administering the survey in the sample barangays. The research assistants will also facilitate the discussions.

***D. Purpose, Mechanics & Expected Outputs of FGD***

Mr. Romeo Bayle next gave a brief overview of the activity to be undertaken by the participants. He explained that the purpose of the FGD is to compare and double-check the problems facing tenants and landowners as gathered during the survey in three municipalities – San Miguel, Sta. Fe, and Pastrana – as well as come up with recommendations on how to solve these problems. The participants will be divided into two subgroups: Group I consisting of tenants and Group II composed of landowners and a barangay representative who is neither a landowner

nor a tenant. The two groups will then proceed with the discussion on the tenancy relations. At the end of the discussions, each subgroup was expected to come up with a summary or list of problems and recommendations on improving tenancy relations. The participants will thereafter reconvene in plenary session where each group will present their report.

### ***E. Introduction of Participants***

The participants for each subgroup were identified during the registration. The facilitators divided the group into two subgroups based on the attendance sheets. The groupings are as follows:

#### Group I - Tenants

1. Lydia M. Canillas
2. Francisco Macabansag
3. Leo Obera
4. Ernesto Margallo
5. Alfredo Menil
6. Erlinda Dagami
7. Myrna Pija

#### Group II – Landowners

1. Edgar Eusores
2. Asteria Marquez
3. Patrocenio Amba

The two (2) LAMP representatives, the study consultants, as well as the facilitators were also divided between the subgroups, to wit:

#### Group I - Tenants

1. Mr. Romeo Bayle
2. Ms. Teresa Nuova (LAMP)
3. Ms. Eden Buñales

#### Group II – Landowners

1. Atty. Wilfredo Peñaflor
2. Mr. Lil Enaro (LAMP)
3. Ms. Aileen Velarde

## **III. Discussion Proper**

### ***A. Group I - Tenants***

#### ***a. Composition and Profile***

The group was composed of ten persons: seven participants, one resource person, and two facilitators. Two of the participants, Mr. Leo Obera from Lukay, San Miguel and Mrs. Myrna Pija from Socsocon, Pastrana are tenants and incumbent barangay officials. The rest of the participants are: Mrs. Lydia Canillas and Mr. Alfredo Menil from San Juan, Sta. Fe; Mr., Francisco Macabansag and Mr. Ernesto Margallo from Lukay, San Miguel; Mrs. Erlinda Dagami from Socsocon, Pastrana. Ms. Ma. Teresa Nuova, LAMP representative, and Ms. Eden Buñales, research assistant, acted as facilitators. Mr. Romeo Bayle, Social Consultant, was the resource person.

The tenancy profile of the group as borne out during the discussion is as follows:

- Majority of the participants (4 out of 7) have leasehold agreements;
- Majority of the participants have inherited their tenancy;

- All have absentee claimants as landowners;
- Majority of the landowners are well off;
- Four of the participants cultivate or tend both rice and coconut land;
- The sharing arrangement commonly practiced for coconut is 50-50 and only one participant follows a 40-60 sharing arrangement;
- All tenants of rice land (including those with leasehold contracts) pay a fixed rental to landowners;
- Most of the participants are not aware of their rights except on the sharing arrangement;
- One of the participants has no problem with his landowner;
- The length of tenancy ranges from three to 40 years; and
- The landowners of two participants were the ones who initiated the execution of a leasehold agreement.

*b. Problems in Tenancy Relations*

The data on the problems in tenancy relations as gathered from the interview were then presented, to wit:

Problems in Tenancy Relations (Tenants' View)	Tenants	
	F	%
A. Not Problematic	7	47
B. Problematic	8	53
1. Shouldering in full of farm expenses by tenants		
2. No written tenancy agreement		
3. Difficulty in delivering the required quality of palay (dry and clean) as landowner's share		
4. Installation of another tenant over a portion of landholding		
5. Questionable succession of landowner		
6. Landowner not easily approachable for assistance		
7. Forced harvesting (coconuts)		
TOTAL	15	100

The participants commented that shouldering full farm expenses is a common problem among tenants of coconut lands. However, of the five tenants of coconut lands in the group, only one shoulders in full farm expenses. Three of them said that their landowners shoulder half of expenses for harvesting and transportation.

All agreed that the problem of most tenants is lack of security of tenure or absence of a written tenancy agreement. Three of the participants have no written tenancy agreement. Mrs. Pija and Mrs. Dagami informed the group that most of the tenants in their barangay have no written tenancy agreement.

One of the problems of tenants is difficulty in delivering the required quality of palay (dry & clean) as landowner's share during wet season. The participants said that some landowners do

not understand that it is very difficult to dry palay during the rainy season. Others do not accept their rent so that their payment doubles for the next harvest and it becomes very hard for them to pay. Only one participant has no problem in delivering the required quality of palay (dry & clean) because he gives money instead of palay to his landowner as rental. This is their internal arrangement. One participant however, Mrs. Canillas, said that her agreement with the landowner states that she will give only clean palay.

None of the participants encountered problems involving questionable succession of landowners; installation of another tenant over a portion of the landholding; unapproachable landowners; and forced harvesting of coconuts. However, some acknowledged that there were times their landowners have asked them to harvest coconuts prematurely. But they simply refused to do so because it would not be profitable. All of them stated that they do not ask for help on assistance from their landowners. Some said they do not want to have "*utang na loob*" (debt of gratitude), while others feared it might be a cause for their ejection.

The participants mentioned additional problems such as the right of tenants to repair and improve their house situated within the landholding under tenancy. Some landowners prohibit them from undertaking house repairs or improvements for fear that if they use strong or permanent materials for their houses, the landowners would no longer be able to eject or remove them. Another problem is that some landowners also prohibit tenants from replacing old coconut trees for fear that the sharing arrangement would be changed to 75-25 in favor of the tenant.

### 3. Recommendations

On the issue of securing tenancy rights, certain guide questions were presented to the participants. These guide questions were explained in the local dialect by the facilitators. These are as follows:

1. Is it acceptable for the tenancy relations to be covered by a written agreement executed through the DAR?
2. Is the 75-25 sharing arrangement in favor of the tenant acceptable?
3. Is it acceptable for the tenancy agreement to be annotated on the land title?
4. Should landowners provide land to their tenants?
5. What can you recommend to address the tenancy problems presented?

All the participants strongly recommended that there should be a written leasehold contract or agreement executed through the DAR that should govern the tenancy relations. They suggested that the right to replant coconut trees, to undertake house repairs and improvements, and similar concerns should be stipulated in the agreement.

Majority agreed that the 75-25 sharing arrangement for palay is acceptable. But one participant said this is not acceptable for coconut because it would be unfair to the landowner. A 50-50 sharing arrangement for coconut lands is good enough more so if the landowner shares in farm expenses.

Mr. Macabansag highly recommended that the written tenancy agreement be annotated on the land title. For him, this will assure security of tenant's rights even if the landowner sells the landholding. This was supported by the participants.

The facilitator then asked the participants what they think of the idea of the landowner giving a portion of the landholding to his tenant. The participants indicated their agreement to this idea. But on the question whether landowners should give their entire landholdings to their tenants, the participants said that this is next to impossible.

The participants also suggested that tenants and landowners should be made aware of their rights and obligations so that conflicts between them can be avoided. This can be done through information dissemination such as by distributing brochures that explain the rights and obligations of tenants and landowners.

## **B. Group II – Landowners**

### **a. Composition and Profile**

The group was composed of five (5) participants. Two (2) participants (Mr. Edgar Eusores and Mrs. Asteria Marquez) are landowners of tenanted lots in Brgy. Lukay, San Miguel, Leyte and likewise incumbent barangay officials. One (1) participant (Mr. Patrocenio Amba) is neither a landowner nor a tenant; he is the Barangay Chairman of Brgy. Halaba Pastrana, Leyte. Resource persons were Lil Enaro, LAMP Representative, and Atty. Wilfredo Peñaflor, Legal Consultant. The facilitator was Aileen Velarde.

### **b. Problems in Tenancy Relations**

To start the discussions, the purpose and expected output of the activity was reiterated. The discussion moved on to the presentation of data (translated in Waray-waray) gathered from the interview of 13 landowners in seven (7) barangays, to wit:

<b>Problems in Tenancy Relations (Landowners' View)</b>	<b>Landowners</b>	
	<b>F</b>	<b>%</b>
A. Not Problematic	8	62
B. Problematic	5	38
1. Subleasing by tenants without landowner's consent		
2. Unpaid irrigation fees by tenants		
3. Incomplete delivery of landowner's share		
4. Non-compliance by tenants with required quality of palay as landowner's share		
5. Abandonment by tenant		
6. Unsatisfactory tending/ tilling of land by tenant		
TOTAL	13	100

After the data was presented, the participants gave their remarks on each problem.

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### Subleasing by tenants without landowner's consent

The participants agreed that subleasing by tenants without the landowner's consent is widely practiced. The most common is subleasing within the tenant's family. It occurs mostly when the tenant gets older. The land is subdivided among the household members without the knowledge of the landowner. All the participants are aware that such practice is against the leasehold agreement.

One (1) participant, Patrocenio Amba, observed that this problem is probably due to the lack of awareness by tenants of their rights and obligations. He explained that tenants and their families are mostly unaware of the conditions in tenancy agreements regarding succession. The tenant's family may have thought that they have the right to divide the land and succeed to the tenancy even without the landowner's consent since their father or forefathers have tilled the land for a long time.

### Unpaid irrigation fees by tenants

The participants observed that in riceland wherein payment of fixed rental is usually the sharing arrangement, the lessee or tenant pays for the irrigation fees. The two (2) landowners from San Miguel do not consider this as a problem since in their area, the collector of NIA follows-up on the tenants not the landowners. They agreed, however, that some landowners have indeed encountered this problem.

### Incomplete delivery of landowner's share

The participants commented that the problem is not incomplete delivery but merely delayed delivery of landowner's share. However, based on their experience, the reasons for the delay are mostly justifiable (e.g., sickness in the family, school expenses, and other contingencies). They claimed the landowners are considerate to their tenants as long as the delayed rentals are eventually covered.

### Non-compliance by tenant with required quality of palay (dry and clean) as landowner's share

The landowners confirmed that this problem exists but they do understand the difficulty of tenants in delivering dry and clean palay during harvest season. Tenants are unable to deliver the prescribed quality of palay during wet season when it is almost impossible for them to dry and clean palay.

### Abandonment by tenant

The participants stated that abandonment by tenants rarely happens. Perhaps, this could happen if the relationship between the landowner and the tenant is not good. One (1) landowner said that in their place, San Miguel tenants would not abandon their farms because they have nowhere else to go and farming is their only source of income.

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### Unsatisfactory tending/ tilling of land by tenant

All the participants agreed that this usually happens in coconut lands. There are tenants in coconut lands who only wait for the harvest season but never tend the land or take care of the coconut trees. However, tenants of rice lands usually cultivate their lands properly because if they fail to do so, their harvest will substantially decline.

During the discussion, the participants presented additional problems of landowners as follows:

### Dishonesty of tenants

The participating landowners disclosed that one such problem is the dishonesty of some tenants. These tenants do not inform the landowners of the exact quantity or volume of harvest. They give them lesser number of nuts or sacks of palay than their actual harvest.

### Failure of tenants to inform landowners of important farm activities

The participating landowners also cited as a problem the failure of tenants to inform landowners of the schedule of harvest especially in coconut lands and the planting of additional crops other than those agreed upon. One landowner asked if they have the right to a share of the auxiliary crops planted in her lot.

### *c. Recommendations*

To elicit recommendations on securing tenancy rights, the same guide questions (as in Group I) were also asked of the participants. The guide questions were likewise explained by the facilitator in the local dialect. These are as follows:

1. Is it acceptable for the tenancy relations to be covered by a written agreement executed through the DAR?
2. Is the 75-25 sharing arrangement in favor of the tenant acceptable?
3. Is it acceptable for the tenancy agreement to be annotated on the land title?
4. Should landowners provide land to their tenants?
5. What can you recommend to resolve the tenancy problems presented?

Three (3) participants agreed on the need for a written tenancy agreement or leasehold contract to be executed through the DAR. In fact, one (1) participant, Mrs. Asteria Marquez, stated that she already has such a leasehold contract and it has helped in improving her relations with her tenant.

Most of the participants said that the 75-25 sharing is acceptable only in ricelands where the tenants shoulder the farm expenses. In coconut lands, however, the participants said they prefer the 50-50 or 40-60 sharing, in favor of the landowner, after deducting farm expenses.

The two (2) landowners strongly objected to annotating the tenancy agreement on their title. They said that it would burden their title and further embolden tenants.

Most of the participants said that the idea of giving land to the tenants would depend on the area available. One (1) participant easily agreed on giving a homelot to the tenant. In fact, she said her tenant already owns a homelot. However, providing the tenant a farm lot of his own was strongly objected to by the participating landowners; perhaps, it could only be possible, they said, if the landholding is very substantial but not in their area where there are mostly small landowners. It would also depend on how good is the relationship between the landowner and the tenant, although one commented that relationship changes over time.

The participants observed that most of the problems facing landowners and tenant will be addressed if the tenancy relation is covered by a written agreement under DAR and the terms and conditions thereof are strictly followed. They also remarked that violation of agreement by tenants should be a basis for their ejection.

One (1) participant recommended that there is a need to educate tenants and landowners of their rights and obligations to avoid these problems.

After the discussion, a summary of the problems and recommendations was prepared and reported during the plenary session.

### **C. Reporting**

#### **1. Tenant Report**

The output of Group I was reported by Eden Buñales and Ma. Teresa Nuena. Ms. Buñales presented the problems in tenancy relations and recommendations on securing tenancy rights. On the other hand, Ms. Nuena reported on the major findings on the composition and profile of the participants.

#### **2. Landowner Report**

The output of Group II consisting of the problems and recommendations on securing tenancy rights was reported by Aileen Velarde.

#### **3. Open Forum**

After the reporting of the two subgroups, an open forum followed. The questions raised by the participants and their corresponding answers provided by the resource persons are as follows:

##### **1. Does the landowner have an obligation to provide homelot to his tenant?**

- Mr. Lil Enaro, LAMP representative, made some clarification regarding "*paghatag hin lote*" (giving homelot). He said that the term does not mean giving land to the tenant for free. It would require giving just compensation to the landowner which has to be arranged. Atty. Peñaflor added that under the rules, the tenant is entitled to a homelot where he can construct his dwelling with an area of not more than three percent (3%) of the landholding but not to exceed 1,000 square meters. The lot shall be included in the leasehold. Transferring ownership homelot to the tenant, however, will depend on whether the landowner would want to sell and the tenant to buy the same.

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2. Who sets the price if the landowner decides to sell a portion of his land to the tenant as homelot?
    - Atty. Peñaflores replied that the parties could either negotiate and agree on the price or have the land covered under agrarian reform and valued by DAR and Landbank.
  3. How does a tenancy relationship end?
    - Atty. Peñaflores explained that tenancy relations may be terminated due to abandonment by tenant, substantial violation of leasehold contract (e.g. non-payment of rentals for several years, subleasing without landowner's consent, etc.), death of tenant who has no successor, and voluntary surrender.
  4. Does written leasehold contract assure preservation of tenancy relation even if the landowner sells the land? How would annotation of the leasehold contract on the landowner's title assure the security of tenure of the tenant?
    - Atty. Peñaflores responded that selling the land is not a ground to end the tenancy relationship because the leasehold survives whoever is the new owner of the land. He explained that a written leasehold agreement provides sufficient security for the tenancy relation. Annotating the leasehold contract on the landowner's title is an additional security. It will put to notice persons interested to buy the land that the same is under tenancy of a particular person.

Before the open forum ended, Atty. Peñaflores remarked that, indeed, based on the questions presented, there appears to be a need for intensive information and education on the rights and obligations of both landowners and tenants. All the participants agreed.

#### **IV. Adjournment**

The activity was adjourned at 12:00 noon.

Prepared by:

**EDEN BUÑALES**

**AILEEN VELARDE**