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[G.R. No. 171101. July 5, 2011]

HACIENDA LUISITA, INCORPORATED, *petitioner,*

LUISITA INDUSTRIAL PARK CORPORATION and RIZAL COMMERCIAL BANKING CORPORATION, *petitioners-in-intervention, vs.* **PRESIDENTIAL AGRARIAN REFORM COUNCIL; SECRETARY NASSER PANGANDAMAN OF THE DEPARTMENT OF AGRARIAN REFORM; ALYANSA NG MGA MANGGAGAWANG BUKID NG HACIENDA LUISITA, RENE GALANG, NOEL MALLARI, and JULIO SUNIGA**[1] **and his SUPERVISORY GROUP OF THE HACIENDA LUISITA, INC. and WINDSOR ANDAYA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; SUPERVISORY GROUP, FARM WORKERS' ORGANIZATIONS AND THEIR LEADERS ARE REAL PARTIES-IN-INTEREST TO BRING AN ACTION UPON THE STOCK DISTRIBUTION PLAN (SDP) OF HACIENDA LUISITA INCORPORATED (HLI). — The SDOA no less identifies "the SDP qualified beneficiaries" as "**the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by [HLI]**." Galang, per HLI's own admission, is employed by HLI, and is, thus, a qualified beneficiary of the SDP; he comes within the definition of a real party-in-interest under Sec. 2, Rule 3 of the Rules of Court, meaning, one who stands to be benefited or injured by the judgment in the suit or is the party entitled to the avails of the suit. The same holds true with respect to the Supervisory Group whose members were admittedly employed by HLI and whose names and signatures even appeared in the annex of the SDOA. Being qualified beneficiaries of the SDP, Suniga and the other

[1] "Jose Julio Zuniga" in some parts of the records.

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61 supervisors are certainly parties who would benefit or be prejudiced by the judgment recalling the SDP or replacing it with some other modality to comply with RA 6657. Even assuming that members of the Supervisory Group are not regular farmworkers, but are in the category of "other farmworkers" mentioned in Sec. 4, Article XIII of the Constitution, thus only entitled to a share of the fruits of the land, as indeed *Fortich* teaches, this does not detract from the fact that they are still identified as being among the "SDP qualified beneficiaries." As such, they are, thus, entitled to bring an action upon the SDP. x x x Further, under Sec. 50, paragraph 4 of RA 6657, farmer-leaders are expressly allowed to represent themselves, their fellow farmers or their organizations in any proceedings before the DAR. x x x Clearly, the respective leaders of the Supervisory Group and AMBALA are contextually real parties-in-interest allowed by law to file a petition before the DAR or PARC.

2. LABOR AND SOCIAL LEGISLATION; EXECUTIVE ORDER NO. 229 (EO 229); THE PRESIDENTIAL AGRARIAN REFORM COUNCIL (PARC) HAS AUTHORITY TO REVOKE OR RECALL AN APPROVED STOCK DISTRIBUTION PLAN. — Under Sec. 31 of RA 6657, as implemented by DAO 10, the authority to approve the plan for stock distribution of the corporate landowner belongs to PARC. However, contrary to petitioner HLI's posture, PARC also has the power to revoke the SDP which it previously approved. It may be, as urged, that RA 6657 or other executive issuances on agrarian reform do not explicitly vest the PARC with the power to revoke/recall an approved SDP. Such power or authority, however, is deemed possessed by PARC under the **principle of necessary implication, a basic postulate that what is implied in a statute is as much a part of it as that which is expressed**. We have explained that "every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms." Further, "every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege. x x x Following the doctrine of necessary implication, it may be stated that the conferment of express power to approve

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a plan for stock distribution of the agricultural land of corporate owners necessarily includes the power to revoke or recall the approval of the plan. As public respondents aptly observe, to deny PARC such revocatory power would reduce it into a toothless agency of CARP, because the very same agency tasked to ensure compliance by the corporate landowner with the approved SDP would be without authority to impose sanctions for non-compliance with it. With the view We take of the case, only PARC can effect such revocation.

3. ID.; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. 6657); THE CONSTITUTIONAL PROSCRIPTION ON IMPAIRMENT OF CONTRACTS DOES NOT APPLY TO HLI'S STOCK DISTRIBUTION OPTION AGREEMENT (SDOA). — A law authorizing interference, when appropriate, in the contractual relations between or among parties is deemed read into the contract and its implementation cannot successfully be resisted by force of the non-impairment guarantee. There is, in that instance, no impingement of the impairment clause, the non-impairment protection being applicable only to laws that derogate **prior** acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. Impairment, in fine, obtains if a **subsequent** law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws existing remedies for the enforcement of the rights of the parties. Necessarily, the constitutional proscription would not apply to laws already in effect at the time of contract execution, as in the case of RA 6657, in relation to DAO 10, *vis-à-vis* HLI's SDOA. x x x Needless to stress, the assailed Resolution No. 2005-32-01 is not the kind of issuance within the ambit of Sec. 10, Art. III of the Constitution providing that "*[n]o law impairing the obligation of contracts shall be passed*."

4. ID.; ID.; SDOA IS A SPECIAL CONTRACT IMBUED WITH PUBLIC INTEREST ENTERED INTO AND CRAFTED PURSUANT TO RA 6657. — HLI tags the SDOA as an ordinary civil law contract and, as such, a breach of its terms and conditions is not a PARC administrative matter, but one that gives rise to a cause of action cognizable by regular courts. This contention has little to commend itself. The SDOA is a **special contract imbued with public interest**, entered into and crafted pursuant to the provisions of RA 6657. It embodies

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the SDP, which requires for its validity, or at least its enforceability, PARC's approval. And the fact that the certificate of compliance–-to be issued by agrarian authorities upon completion of the distribution of stocks—is revocable by the same issuing authority supports the idea that everything about the implementation of the SDP is, at the first instance, subject to administrative adjudication.

5. ID.; ID.; ID.; THE RIGHTS, OBLIGATIONS, AND REMEDIES OF THE PARTIES TO THE SDOA ARE GOVERNED BY RA 6657, NOT THE CORPORATION CODE, NOTWITHSTANDING HLI'S CLAIM OF BEING A CORPORATE ENTITY. — Contrary to the view of HLI, the rights, obligations and remedies of the parties to the SDOA embodying the SDP are primarily governed by RA 6657. It should abundantly be made clear that HLI was precisely created in order to comply with RA 6657, which the OSG aptly described as the "mother law" of the SDOA and the SDP. It is, thus, paradoxical for HLI to shield itself from the coverage of CARP by invoking exclusive applicability of the Corporation Code under the guise of being a corporate entity. Without in any way minimizing the relevance of the Corporation Code since the FWBs of HLI are also stockholders, its applicability is limited as the rights of the parties arising from the SDP should not be made to supplant or circumvent the agrarian reform program. Without doubt, the Corporation Code is the general law providing for the formation, organization and regulation of private corporations. On the other hand, RA 6657 is the special law on agrarian reform. As between a general and special law, the latter shall prevail—*generalia specialibus non derogant*. Besides, the present impasse between HLI and the private respondents is not an intra-corporate dispute which necessitates the application of the Corporation Code. What private respondents questioned before the DAR is the proper implementation of the SDP and HLI's compliance with RA 6657. Evidently, RA 6657 should be the applicable law to the instant case.

6. ID.; ID.; ID.; ID.; MERE INCLUSION OF HLI'S AGRICULTURAL LAND UNDER THE CARP COVERAGE WOULD NOT AMOUNT TO DISPOSITION OF PRACTICALLY ALL OF HLI'S CORPORATE ASSETS. — [T]he mere inclusion of the agricultural land of Hacienda

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Luisita under the coverage of CARP and the land's eventual distribution to the FWBs will not, without more, automatically trigger the dissolution of HLI. As stated in the SDOA itself, the percentage of the value of the agricultural land of Hacienda Luisita in relation to the total assets transferred and conveyed by Tadeco to HLI comprises only 33.296%, following this equation: value of the agricultural lands divided by total corporate assets. By no stretch of imagination would said percentage amount to a disposition of all or practically all of HLI's corporate assets should compulsory land acquisition and distribution ensue.

7. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIARY; JUDICIAL REVIEW; ESSENTIAL REQUIREMENTS BEFORE THE COURT MAY EXERCISE THE POWER OF JUDICIAL REVIEW AND PASS UPON THE CONSTITUTIONALITY OF RA 6657, NOT PRESENT. — When the Court is called upon to exercise its power of judicial review over, and pass upon the constitutionality of, acts of the executive or legislative departments, it does so only when the following essential requirements are first met, to wit: (1) there is an actual case or controversy; (2) that the constitutional question is raised at the earliest possible opportunity by a proper party or one with *locus standi*; and (3) the issue of constitutionality must be the very *lis mota* of the case. Not all the foregoing requirements are satisfied in the case at bar. x x x It has been emphasized in a number of cases that the question of constitutionality will not be passed upon by the Court unless it is properly raised and presented in an appropriate case at the first opportunity. FARM is, therefore, remiss in belatedly questioning the constitutionality of Sec. 31 of RA 6657. The second requirement that the constitutional question should be raised at the earliest possible opportunity is clearly wanting. The last but the most important requisite that the constitutional issue must be the very *lis mota* of the case does not likewise obtain. The *lis mota* aspect is not present, the constitutional issue tendered not being critical to the resolution of the case.

8. ID.; ID.; ID.; ID.; THE QUESTION OF WHETHER OR NOT SECTION 31 OF RA 6657 IS UNCONSTITUTIONAL IS ALREADY MOOT; REQUISITES TO RESOLVE ALREADY MOOT AND ACADEMIC CONSTITUTIONAL ISSUES DO NOT OBTAIN IN CASE AT BAR. — It may

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be well to note at this juncture that Sec. 5 of RA 9700, amending Sec. 7 of RA 6657, has all but superseded Sec. 31 of RA 6657 *vis-à-vis* the stock distribution component of said Sec. 31. In its pertinent part, Sec. 5 of RA 9700 provides: "**[T]hat after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition**." Thus, for all intents and purposes, the stock distribution scheme under Sec. 31 of RA 6657 is no longer an available option under existing law. The question of whether or not it is unconstitutional should be a moot issue. It is true that the Court, in some cases, has proceeded to resolve constitutional issues otherwise already moot and academic provided the following requisites are present: x x x *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; *fourth*, the case is capable of repetition yet evading review. These requisites do not obtain in the case at bar.

9. ID.; ID.; ID.; ID.; SECTION 31 OF RA 6657 IS CONSTITUTIONAL AS IT SIMPLY IMPLEMENTS SECTION 4, ARTICLE XIII OF THE CONSTITUTION. — The wording of [Sec. 4, Art. XIII of the Constitution] is unequivocal—the farmers and regular farmworkers have a right TO OWN DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL. The basic law allows two (2) modes of land distribution—direct and indirect ownership. Direct transfer to individual farmers is the most commonly used method by DAR and widely accepted. Indirect transfer through collective ownership of the agricultural land is the alternative to direct ownership of agricultural land by individual farmers. The aforequoted Sec. 4 EXPRESSLY authorizes collective ownership by farmers. No language can be found in the 1987 Constitution that disqualifies or prohibits corporations or cooperatives of farmers from being the legal entity through which collective ownership can be exercised. The word "collective" is defined as "indicating a number of persons or things considered as constituting one group or aggregate," while "collectively" is defined as "in a collective sense or manner; in a mass or body." By using the word "collectively," the Constitution allows for indirect ownership of land and not just outright agricultural land transfer. This is in recognition of the fact that land reform

may become successful even if it is done through the medium of juridical entities composed of farmers. Collective ownership is permitted in two (2) provisions of RA 6657. Its Sec. 29 allows workers' cooperatives or associations to collectively own the land, while the second paragraph of Sec. 31 allows corporations or associations to own agricultural land with the farmers becoming stockholders or members. x x x [W]orkers' cooperatives or associations under Sec. 29 of RA 6657 and corporations or associations under the succeeding Sec. 31, as differentiated from individual farmers, are authorized vehicles for the collective ownership of agricultural land. Cooperatives can be registered with the Cooperative Development Authority and acquire legal personality of their own, while corporations are juridical persons under the Corporation Code. Thus, Sec. 31 is constitutional as it simply implements Sec. 4 of Art. XIII of the Constitution that land can be owned COLLECTIVELY by farmers.

10. ID.; ID.; ID.; ID.; SECTION 4, ARTICLE XIII OF THE CONSTITUTION IS NOT SELF-EXECUTORY; RA 6657 IS NEEDED TO IMPLEMENT AGRARIAN REFORM. — Sec. 4, Art. XIII of the Constitution makes mention of a commitment on the part of the State to pursue, **by law**, an agrarian reform program founded on the policy of land for the landless, but subject to such priorities as Congress may prescribe, taking into account such abstract variable as "equity considerations." The textual reference to a law and Congress necessarily implies that the above constitutional provision is **not self-executory** and that legislation is needed to implement the urgently needed program of agrarian reform. And RA 6657 has been enacted precisely pursuant to and as a mechanism to carry out the constitutional directives. This piece of legislation, in fact, restates the agrarian reform policy established in the aforementioned provision of the Constitution of promoting the welfare of landless farmers and farmworkers. RA 6657 thus defines "agrarian reform" as "the redistribution of lands … to farmers and regular farmworkers who are landless … to lift the economic status of the beneficiaries and **all other arrangements alternative to the physical redistribution of lands**, such as production or profit sharing, labor administration and the **distribution of shares of stock** which will allow beneficiaries to receive a just share of the fruits of the lands they work." With the view We take of this case, the stock

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distribution option devised under Sec. 31 of RA 6657 hews with the agrarian reform policy, as instrument of social justice under Sec. 4 of Article XIII of the Constitution. Albeit land ownership for the landless appears to be the dominant theme of that policy, We emphasize that Sec. 4, Article XIII of the Constitution, as couched, does not constrict Congress to passing an agrarian reform law planted on direct land transfer to and ownership by farmers and no other, or else the enactment suffers from the vice of unconstitutionality. If the intention were otherwise, the framers of the Constitution would have worded said section in a manner mandatory in character. For this Court, Sec. 31 of RA 6657, with its direct and indirect transfer features, is not inconsistent with the State's commitment to farmers and farmworkers to advance their interests under the policy of social justice. The legislature, thru Sec. 31 of RA 6657, has chosen a modality for collective ownership by which the imperatives of social justice may, in its estimation, be approximated, if not achieved. The Court should be bound by such policy choice.

11. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); STOCK DISTRIBUTION SCHEME DOES NOT MEAN LOSS OF CONTROL OF THE FARMERS OVER THE AGRICULTURAL LAND. — Anent the alleged loss of control of the farmers over the agricultural land operated and managed by the corporation, a reading of the second paragraph of Sec. 31 shows otherwise. Said provision provides that qualified beneficiaries have "the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets." The wording of the formula in the computation of the number of shares that can be bought by the farmers does not mean loss of control on the part of the farmers. It must be remembered that the determination of the percentage of the capital stock that can be bought by the farmers depends on the value of the agricultural land and the value of the total assets of the corporation. There is, thus, nothing unconstitutional in the formula prescribed by RA 6657. The policy on agrarian reform is that control over the agricultural land must always be in the hands of the farmers. Then it falls on the shoulders of DAR and PARC to see to it the farmers should always own majority of the common shares entitled to

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elect the members of the board of directors to ensure that the farmers will have a clear majority in the board. Before the SDP is approved, strict scrutiny of the proposed SDP must always be undertaken by the DAR and PARC, such that the value of the agricultural land contributed to the corporation must always be more than 50% of the total assets of the corporation to ensure that the majority of the members of the board of directors are composed of the farmers. The PARC composed of the President of the Philippines and cabinet secretaries must see to it that control over the board of directors rests with the farmers by rejecting the inclusion of non-agricultural assets which will yield the majority in the board of directors to non-farmers. Any deviation, however, by PARC or DAR from the correct application of the formula prescribed by the second paragraph of Sec. 31 of RA 6675 does not make said provision constitutionally infirm. Rather, it is the application of said provision that can be challenged. Ergo, Sec. 31 of RA 6657 does not trench on the constitutional policy of ensuring control by the farmers.

12. ID.; ID.; ADVANTAGES OF COLLECTIVE OWNERSHIP OF AGRICULTURAL LANDS THROUGH JURIDICAL PERSONS COMPOSED OF FARMERS, DISCUSSED. — [T]he principle of "land to the tiller" and the old pastoral model of land ownership where non-human juridical persons, such as corporations, were prohibited from owning agricultural lands are no longer realistic under existing conditions. Practically, an individual farmer will often face greater disadvantages and difficulties than those who exercise ownership in a collective manner through a cooperative or corporation. The former is too often left to his own devices when faced with failing crops and bad weather, or compelled to obtain usurious loans in order to purchase costly fertilizers or farming equipment. The experiences learned from failed land reform activities in various parts of the country are lack of financing, lack of farm equipment, lack of fertilizers, lack of guaranteed buyers of produce, lack of farm-to-market roads, among others. Thus, at the end of the day, there is still no successful implementation of agrarian reform to speak of in such a case. Although success is not guaranteed, a cooperative or a corporation stands in a better position to secure funding and competently maintain the agri-business than the individual farmer. While direct singular ownership over farmland does offer advantages, such as the

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ability to make quick decisions unhampered by interference from others, yet at best, these advantages only but offset the disadvantages that are often associated with such ownership arrangement. Thus, government must be flexible and creative in its mode of implementation to better its chances of success. One such option is collective ownership through juridical persons composed of farmers.

13. ID.; ID.; NEITHER RA 6657 NOR THE SDOA GUARANTEES THE IMPROVEMENT OF THE FARMWORKERS BENEFICIARIES' (FWBs) ECONOMIC STATUS. — Paragraph 2 of the above-quoted provision specifically mentions that "a more equitable distribution and ownership of land x x x shall be undertaken to provide farmers and farm workers with the **opportunity** to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands." Of note is the term "opportunity" which is defined as a favorable chance or opening offered by circumstances. Considering this, by no stretch of imagination can said provision be construed as a guarantee in improving the lives of the FWBs. At best, it merely provides for a possibility or favorable chance of uplifting the economic status of the FWBs, which may or may not be attained. Pertinently, improving the economic status of the FWBs is neither among the legal obligations of HLI under the SDP nor an imperative imposition by RA 6657 and DAO 10, a violation of which would justify discarding the stock distribution option. Nothing in that option agreement, law or department order indicates otherwise. x x x To address urgings that the FWBs be allowed to disengage from the SDP as HLI has not anyway earned profits through the years, it cannot be over-emphasized that, as a matter of common business sense, no corporation could guarantee a profitable run all the time. As has been suggested, one of the key features of an SDP of a corporate landowner is the likelihood of the corporate vehicle not earning, or, worse still, losing money. The Court is fully aware that one of the criteria under DAO 10 for the PARC to consider the advisability of approving a stock distribution plan is the likelihood that the plan "**would result in increased income and greater benefits to [qualified beneficiaries] than if the lands were divided and distributed to them individually**." But as aptly noted during the oral arguments, DAO 10 ought to have not, as it cannot, actually exact assurance of success on something that is subject to the

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will of man, the forces of nature or the inherent risky nature of business. Just like in actual land distribution, an SDP cannot guarantee, as indeed the SDOA does not guarantee, a comfortable life for the FWBs. The Court can take judicial notice of the fact that there were many instances wherein after a farmworker beneficiary has been awarded with an agricultural land, he just subsequently sells it and is eventually left with nothing in the end.

14. ID.; ID.; THE DETERMINATION OF SHARES TO BE DISTRIBUTED TO FWBs STRICTLY ADHERES TO THE FORMULA PRESCRIBED BY SECTION 31 (B) OF RA 6657. — The mandatory minimum ratio of land-to-shares of stock supposed to be distributed or allocated to qualified beneficiaries, adverting to what Sec. 31 of RA 6657 refers to as that "**proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**" had been observed. Paragraph one (1) of the SDOA, which was based on the SDP, conforms to Sec. 31 of RA 6657. x x x The appraised value of the agricultural land is PhP 196,630,000 and of HLI's other assets is PhP 393,924,220. The total value of HLI's assets is, therefore, PhP 590,554,220. The percentage of the value of the agricultural lands (PhP 196,630,000) in relation to the total assets (PhP 590,554,220) is 33.296%, which represents the stockholdings of the 6,296 original qualified farmworker-beneficiaries (FWBs) in HLI. The total number of shares to be distributed to said qualified FWBs is 118,391,976.85 HLI shares. This was arrived at by getting 33.296% of the 355,531,462 shares which is the outstanding capital stock of HLI with a value of PhP 355,531,462. Thus, if we divide the 118,391,976.85 HLI shares by 6,296 FWBs, then each FWB is entitled to 18,804.32 HLI shares. These shares under the SDP are to be given to FWBs for free. The Court finds that the determination of the shares to be distributed to the 6,296 FWBs strictly adheres to the formula prescribed by Sec. 31(b) of RA 6657.

15. ID.; ID.; "TWO (2) YEAR" PERIOD MENTIONED IN SECTION 31 OF RA 6657, CONSTRUED. — Public respondents, however, submit that the distribution of the mandatory minimum ratio of land-to-shares of stock, referring to the 118,391,976.85 shares with par value of PhP 1 each,

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should have been made in full within two (2) years from the approval of RA 6657, in line with the last paragraph of Sec. 31 of said law. Public respondents' submission is palpably erroneous. We have closely examined the last paragraph alluded to, with particular focus on the two-year period mentioned, and nothing in it remotely supports the public respondents' posture. x x x Properly viewed, the words "**two (2) years**" clearly refer to the period within which the corporate landowner, to avoid land transfer as a mode of CARP coverage under RA 6657, is to avail of the stock distribution option or to have the SDP approved. The HLI secured approval of its SDP in November 1989, well within the two-year period reckoned from June 1988 when RA 6657 took effect.

16. ID.; ID.; RA 6657 IN RELATION TO DAR ADMINISTRATIVE ORDER NO. 10 (DAO 10); DOES NOT REQUIRE HLI TO KEEP THE FARM INTACT AND UNFRAGMENTED.— Sec. 5(a)—just like the succeeding Sec. 5(b) of DAO 10 on increased income and greater benefits to qualified beneficiaries—is but one of the stated criteria to guide PARC in deciding on whether or not to accept an SDP. Said Sec. 5(a) does not exact from the corporate landowner-applicant the undertaking to keep the farm intact and unfragmented *ad infinitum*. And there is logic to HLI's stated observation that the key phrase in the provision of Sec. 5(a) is "viability of corporate operations": "[w]hat is thus required is not the agricultural land remaining intact x x x but the viability of the corporate operations with its agricultural land being intact and unfragmented. Corporate operation may be viable even if the corporate agricultural land does not remain intact or [un]fragmented."

17. ID.; ID.; ID.; HLI HAS NOT YET FULLY COMPLIED WITH ITS UNDERTAKING TO DISTRIBUTE HOMELOTS TO FWBs. — Under the SDP, HLI undertook to "subdivide and allocate for free and without charge among the qualified family-beneficiaries x x x residential or homelots of not more than 240 sq. m. each, with each family beneficiary being assured of receiving and owning a homelot in the barrio or *barangay* where it actually resides," "within a reasonable time." More than sixteen (16) years have elapsed from the time the SDP was approved by PARC, and yet, it is still the contention of the FWBs that not all was given the 240-square meter homelots

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and, of those who were already given, some still do not have the corresponding titles. x x x Other than the financial report, however, no other substantial proof showing that all the qualified beneficiaries have received homelots was submitted by HLI. Hence, this Court is constrained to rule that HLI has not yet fully complied with its undertaking to distribute homelots to the FWBs under the SDP.

18. ID.; ID.; ID.; FORMULA IN THE DISTRIBUTION OF SHARES OF STOCK BASED ON THE NUMBER OF "MAN DAYS" DEVIATES FROM SECTION 1 OF DAO 10. — [T]he distribution of the shares of stock to the FWBs, albeit not entailing a cash out from them, is contingent on the number of "man days," that is, the number of days that the FWBs have worked during the year. This formula deviates from Sec. 1 of DAO 10, which decrees the distribution of equal number of shares to the FWBs as the minimum ratio of shares of stock for purposes of compliance with Sec. 31 of RA 6657. x x x [I]t should be stressed that, at the time PARC approved HLI's SDP, HLI recognized **6,296** individuals as qualified FWBs. And under the 30-year stock distribution program envisaged under the plan, FWBs who came in after 1989, new FWBs in fine, may be accommodated, as they appear to have in fact been accommodated as evidenced by their receipt of HLI shares. Now then, by providing that the number of shares of the original 1989 FWBs shall depend on the number of "man days," HLI violated the afore-quoted rule on stock distribution and effectively deprived the FWBs of equal shares of stock in the corporation, for, in net effect, these 6,296 qualified FWBs, who theoretically had given up their rights to the land that could have been distributed to them, suffered a dilution of their due share entitlement. x x x [I]t is clear as day that the original 6,296 FWBs, who were qualified beneficiaries at the time of the approval of the SDP, suffered from watering down of shares. As determined earlier, each original FWB is entitled to 18,804.32 HLI shares. The original FWBs got less than the guaranteed 18,804.32 HLI shares per beneficiary, because the acquisition and distribution of the HLI shares were based on "man days" or "number of days worked" by the FWB in a year's time. As explained by HLI, a beneficiary needs to work for at least 37 days in a fiscal year before he or she becomes entitled to HLI shares. If it falls below 37 days, the FWB, unfortunately, does not get any share at year end. The number

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of HLI shares distributed varies depending on the number of days the FWBs were allowed to work in one year. Worse, HLI hired farmworkers in addition to the original 6,296 FWBs, such that, as indicated in the Compliance dated August 2, 2010 submitted by HLI to the Court, the total number of farmworkers of HLI as of said date stood at 10,502. All these farmworkers, which include the original 6,296 FWBs, were given shares out of the 118,931,976.85 HLI shares representing the 33.296% of the total outstanding capital stock of HLI. Clearly, the minimum individual allocation of each original FWB of 18,804.32 shares was diluted as a result of the use of "man days" and the hiring of additional farmworkers.

19. ID.; ID.; ID.; 30-YEAR TIMEFRAME FOR STOCK TRANSFER IS CONTRARY TO SECTION 11 OF DAO 10; DISTRIBUTION OF SHARES OF STOCK TO FWBs MUST BE MADE WITHIN 3 MONTHS FROM HLI'S RECEIPT OF THE PARC APPROVED SDP; HLI'S FAILURE TO COMPLY THEREWITH JUSTIFIES REVOCATION OF THE SDP. — [P]ar. 3 of the SDOA expressly providing for a 30-year timeframe for HLI-to-FWBs stock transfer is an arrangement contrary to what Sec. 11 of DAO 10 prescribes. Said Sec. 11 provides for the implementation of the approved stock distribution plan within three (3) months from receipt by the corporate landowner of the approval of the plan by PARC. In fact, based on the said provision, the transfer of the shares of stock in the names of the qualified FWBs should be recorded in the stock and transfer books and must be submitted to the SEC within sixty (60) days from implementation. x x x To the Court, there is a purpose, which is at once discernible as it is practical, for the three-month threshold. Remove this timeline and the corporate landowner can veritably evade compliance with agrarian reform by simply deferring to absurd limits the implementation of the stock distribution scheme. x x x Taking into account the above discussion, the revocation of the SDP by PARC should be upheld for violating DAO 10. It bears stressing that under Sec. 49 of RA 6657, the PARC and the DAR have the power to issue rules and regulations, substantive or procedural. Being a product of such rule-making power, DAO 10 has the force and effect of law and must be duly complied with. The PARC is, therefore, correct in revoking the SDP.

20. ID.; ID.; BUYERS OF LOTS PREVIOUSLY SUBJECTS OF THE CARP COVERAGE ARE CONSIDERED BUYERS IN GOOD FAITH, THEY ACQUIRED RIGHTS WHICH CANNOT BE DISREGARDED BY DAR, PARC, AND EVEN BY THE COURT. — [I]ntervenor RCBC and LIPCO knew that the lots they bought were subjected to CARP coverage by means of a stock distribution plan, as the DAR conversion order was annotated at the back of the titles of the lots they acquired. However, they are of the honest belief that the subject lots were validly converted to commercial or industrial purposes and for which said lots were taken out of the CARP coverage subject of PARC Resolution No. 89-12-2 and, hence, can be legally and validly acquired by them. After all, Sec. 65 of RA 6657 explicitly allows conversion and disposition of agricultural lands previously covered by CARP land acquisition "after the lapse of five (5) years from its award when the land ceases to be economically feasible and sound for agricultural purposes or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes." Moreover, DAR notified all the affected parties, more particularly the FWBs, and gave them the opportunity to comment or oppose the proposed conversion. DAR, after going through the necessary processes, granted the conversion of 500 hectares of Hacienda Luisita pursuant to its primary jurisdiction under Sec. 50 of RA 6657 to determine and adjudicate agrarian reform matters and its original exclusive jurisdiction over all matters involving the implementation of agrarian reform. The DAR conversion order became final and executory after none of the FWBs interposed an appeal to the CA. In this factual setting, RCBC and LIPCO purchased the lots in question on their honest and well-founded belief that the previous registered owners could legally sell and convey the lots though these were previously subject of CARP coverage. Ergo, RCBC and LIPCO acted in good faith in acquiring the subject lots. x x x [B]oth LIPCO and RCBC purchased portions of Hacienda Luisita for value. Undeniably, LIPCO acquired 300 hectares of land from Centennary for the amount of PhP 750 million pursuant to a Deed of Sale dated July 30, 1998. On the other hand, in a Deed of Absolute Assignment dated November 25, 2004, LIPCO conveyed portions of Hacienda Luisita in favor of RCBC by way of *dacion en pago* to pay for a loan of PhP 431,695,732.10. As *bona fide* purchasers for

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value, both LIPCO and RCBC have acquired rights which cannot just be disregarded by DAR, PARC or even by this Court.

21. ID.; ID.; WHILE REVOCATION OF THE HLI'S SDP WAS UPHELD, CERTAIN RIGHTS OF THE PARTIES HAVE TO BE RESPECTED PURSUANT TO THE "OPERATIVE FACT" DOCTRINE. — While We affirm the revocation of the SDP on Hacienda Luisita subject of PARC Resolution Nos. 2005-32-01 and 2006-34-01, the Court cannot close its eyes to certain "operative facts" that had occurred in the interim. Pertinently, the "operative fact" doctrine realizes that, in declaring a **law** or **executive action** null and void, or, by extension, no longer without force and effect, undue harshness and resulting unfairness must be avoided. This is as it should realistically be, since rights might have accrued in favor of natural or juridical persons and obligations justly incurred in the meantime. The actual existence of a statute or executive act is, prior to such a determination, an operative fact and may have consequences which cannot justly be ignored; the past cannot always be erased by a new judicial declaration. x x x [C]onsidering that more than two decades had passed since the PARC's approval of the HLI's SDP, in conjunction with numerous activities performed in good faith by HLI, and the reliance by the FWBs on the legality and validity of the PARC-approved SDP, perforce, certain rights of the parties, more particularly the FWBs, have to be respected pursuant to the application in a general way of the operative fact doctrine.

22. ID.; ID.; ID.; FWBs WHO OPTED TO REMAIN AS HLI STOCKHOLDERS MAY DESIRE TO CONTINUE AS SUCH. — While the assailed PARC resolutions effectively nullifying the Hacienda Luisita SDP are upheld, the revocation must, by application of the operative fact principle, give way to the right of the original 6,296 qualified FWBs to choose whether they want to remain as HLI stockholders or not. The Court cannot turn a blind eye to the fact that in 1989, 93% of the FWBs agreed to the SDOA (or the MOA), which became the basis of the SDP approved by PARC per its Resolution No. 89-12-2 dated November 21, 1989. From 1989 to 2005, the FWBs were said to have received from HLI salaries and cash benefits, hospital and medical benefits, 240-square meter homelots, 3% of the gross produce from agricultural lands, and 3% of the proceeds of the sale of the 500-hectare converted

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land and the 80.51-hectare lot sold to SCTEX. HLI shares totaling 118,391,976.85 were distributed as of April 22, 2005. On August 6, 20l0, HLI and private respondents submitted a Compromise Agreement, in which HLI gave the FWBs the option of acquiring a piece of agricultural land or remain as HLI stockholders, and as a matter of fact, most FWBs indicated their choice of remaining as stockholders. These facts and circumstances tend to indicate that some, if not all, of the FWBs may actually desire to continue as HLI shareholders. A matter best left to their own discretion. With respect to the other FWBs who were not listed as qualified beneficiaries as of November 21, 1989 when the SDP was approved, they are not accorded the right to acquire land but shall, however, continue as HLI stockholders. All the benefits and homelots received by the 10,502 FWBs (6,296 original FWBs and 4,206 non-qualified FWBs) listed as HLI stockholders as of August 2, 2010 shall be respected with no obligation to refund or return them since the benefits (except the homelots) were received by the FWBs as farmhands in the agricultural enterprise of HLI and other fringe benefits were granted to them pursuant to the existing collective bargaining agreement with Tadeco. If the number of HLI shares in the names of the original FWBs who opt to remain as HLI stockholders falls below the guaranteed allocation of 18,804.32 HLI shares per FWB, the HLI shall assign additional shares to said FWBs to complete said minimum number of shares at no cost to said FWBs.

23. ID.; ID.; ID.; FWBs WHO WERE AWARDED HOMELOTS ARE NOT OBLIGED TO RETURN THE SAME TO HLI OR PAY FOR ITS VALUE. — With regard to the homelots already awarded or earmarked, the FWBs are not obliged to return the same to HLI or pay for its value since this is a benefit granted under the SDP. The homelots do not form part of the 4,915.75 hectares covered by the SDP but were taken from the 120.9234 hectare residential lot owned by Tadeco. Those who did not receive the homelots as of the revocation of the SDP on December 22, 2005 when PARC Resolution No. 2005-32-01 was issued, will no longer be entitled to homelots. Thus, in the determination of the ultimate agricultural land that will be subjected to land distribution, the aggregate area of the homelots will no longer be deducted.

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24. ID.; ID.; ID.; EFFECTS OF THE REVOCATION OF THE SDP ON HLI. — HLI will still exist as a corporation even after the revocation of the SDP although it will no longer be operating under the SDP, but pursuant to the Corporation Code as a private stock corporation. The non-agricultural assets amounting to PhP 393,924,220 shall remain with HLI, while the agricultural lands valued at PhP 196,630,000 with an original area of 4,915.75 hectares shall be turned over to DAR for distribution to the FWBs. To be deducted from said area are the 500-hectare lot subject of the August 14, 1996 Conversion Order, the 80.51-hectare SCTEX lot, and the total area of 6,885.7 square meters of individual lots that should have been distributed to FWBs by DAR had they not opted to stay in HLI. HLI shall be paid just compensation for the remaining agricultural land that will be transferred to DAR for land distribution to the FWBs. We find that the date of the "taking" is November 21, 1989, when PARC approved HLI's SDP per PARC Resolution No. 89-12-2. DAR shall coordinate with LBP for the determination of just compensation. We cannot use May 11, 1989 when the SDOA was executed, since it was the SDP, not the SDOA, that was approved by PARC.

BRION, *J., separate concurring and dissenting opinion*:

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; REAL PARTIES-IN-INTEREST IN A CASE INVOLVING THE VALIDITY OF STOCK DISTRIBUTION PLAN (SDP) OF HACIENDA LUISTA, INC. (HLI). — Since the central question in this case involves the validity of the SDOA/SDP, those who stand to be benefited or injured by the Court's judgment on this question are necessarily real parties-in-interest. The real parties-in-interest as reflected in the pleadings, are the following: (1) those who are signatories of the May 11, 1989 SDOA; and (2) those who are not signatories to the May 11, 1989 SDOA but, by its terms, are nevertheless entitled to its benefits. The SDOA included as its qualified beneficiaries those "farmworkers who appear in the annual payroll, inclusive of permanent and seasonal employees, who are regularly or periodically hired by the SECOND PARTY [HLI]." It made no distinction between regular and seasonal farmworkers, and between regular and supervisory farmworkers. All that the SDOA required for inclusion as a beneficiary is that the

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farmworker appear in HLI's annual payroll, regardless of when he or she began working for HLI. Thus, Rene Galang, who started his employment with HLI in 1990 after the SDOA was executed, also possesses standing to participate in this case, since he is considered a qualified beneficiary even if he was not an SDOA signatory like Julio Zuniga, Windsor Andaya and Noel Mallari. Although FARM is an organization created only after the present petition was filed with the Court, its members are qualified beneficiaries of the SDOA and, like Rene Galang, are also clothed with the requisite standing.

2. POLITICAL LAW; CONSTITUTIONAL LAW; SUPREME COURT; POWER OF JUDICIAL REVIEW; ESSENTIAL REQUIREMENTS. — In the exercise of the power of judicial review over a legislative act alleged to be unconstitutional, the Court must ensure that the constitutional issue meets the following essential requirements: there is an actual case or controversy; the constitutional question is raised at the earliest possible opportunity by a proper party or one with *locus standi*; and the issue of constitutionality must be the very *lis mota* of the case.

3. ID.; ID.; ID.; ID.; ID.; *LIS MOTA* REQUIREMENT, ABSENT IN CASE AT BAR. — I agree that the constitutional issue in the present case fails to comply with the *lis mota* requirement. The settled rule is that courts will refrain from ruling on the issue of constitutionality unless it is truly unavoidable and the issue lies at the core of, or is the core of, the dispute in the case; In other words, the case cannot be resolved unless the constitutional question is passed upon. Equally settled is the presumption of constitutionality that every law carries; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, not one that is doubtful, speculative or argumentative. The present dispute is principally anchored on the alleged grave abuse of discretion that the PARC committed when it revoked HLI's SDP. All the other issues raised, such as the extent of the PARC's jurisdiction, the legality of the SDOA, and LIPCO's and RCBC's rights as transferees of portions of HLI's lands, originate from this determination. x x x [T]he Court can resolve these issues without having to delve into the constitutionality of the stock distribution option embodied in Section 31 of CARL. x x x I see no compelling reason for this Court to consider the constitutional issue. This

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issue is likewise best left unresolved, given that the CARL has now been superseded by RA 9700 and the stock distribution option is no longer allowed by law; not only is a constitutional pronouncement not necessary as discussed above, but such pronouncement may even unsettle what to date are stable stock distribution relationships under this superseded law.

4. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (CARL); THE PRESIDENTIAL AGRARIAN REFORM COUNCIL (PARC) HAS THE POWER TO REVOKE PREVIOUSLY APPROVED SDP BY IMPLICATION; EXPLAINED. — I also maintain that the PARC's power and authority to approve the SDP under Section 31 of the CARL includes, by implication, the power to revoke this approval. The PARC's **authority to approve the SDP** is expressed in Section 10 of EO No. 229. x x x The CARL preserved the PARC's authority to approve the SDP in its Section 31. x x x While the provision does not specify who has the authority to revoke the approval of the stock distribution plan, logic dictates that the PARC be the proper body to exercise this authority. If the approval was at the highest level (*i.e.*, at the level of the PARC), revocation cannot be at any other level; otherwise, the absurd situation of a lower level of authority revoking the action of a higher level will result. In line with the power granted to the PARC and the DAR to issue rules and regulations to carry out the objectives of the CARL, the DAR issued Administrative Order (AO) No. 10-1988. x x x Thus, the corporate landowner is obliged under Section 11 of this AO to implement the SDP within three months after the plan is approved by the PARC. A Certificate of Compliance follows the execution of the SDP to confirm its compliance with statutory and regulatory requirements. Compliance, however, is not a one-time determination; even after the approval of the SDP, the Secretary of Agrarian Reform, or his designated representatives, is under the obligation to strictly monitor the implementation of the SDP to ensure continuing compliance with the statutory (the CARL) and regulatory (the AO) requirements. Section 12 of the AO confirms that the Certificate of Compliance can still be revoked even after its issuance, if the corporate landowner is found violating the requirements of Section 31 of the CARL. If this authority is granted ***after*** the corporate landowner has been issued a Certificate of Compliance, with more reason

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should the approval of the SDP be subject to revocation ***prior*** to the issuance of a Certificate of Compliance. At that prior point, the PARC has not even accepted and approved compliance with the SDP as legally satisfactory. While the rules do not expressly designate the PARC as the entity with the authority to revoke, the PARC nevertheless is granted the continuing authority, under Section 18 of EO No. 229, to implement the policies, rules and regulations necessary to implement each component of the CARP. This grant is a catch-all authority intended to cover all the implicit powers that the express grants do not specifically state, and must necessarily include the power of revocation.

5. ID.; ID.; HLI'S SDP IS VOID FOR BEING CONTRARY TO LAW; TWO MAIN POINTS OF INVALIDITY, DISCUSSED. — I consider HLI's SDP/SDOA to be null and void because its terms are contrary to law. I specifically refer to two main points of invalidity. *First* is the "man days" method the SDP/SDOA adopted in computing the number of shares each FWB is entitled to get; and *second* is the extended period granted to HLI to complete the distribution of the 118,391,976.85 shares, which violates the compliance periods provided under Section 11 of AO No. 10-1988. Under the SDOA/SDP, the qualified FWBs will receive, at the end of every fiscal year, HLI shares based on the number of days that they worked for HLI during the year. This scheme runs counter to Section 4 of the DAR AO No. 10-1988. x x x The "man days" method of determining the shares to be distributed to each FWB is contrary to the mandate to distribute equal number of shares to each FWB, and is not saved by the prerogative of the landowner to adopt distribution schemes based on factors desirable as a matter of sound company policy. The "man days" method leaves it entirely to the unregulated will of HLI, as the employer, to determine the number of workers and their working hours, that in turn becomes the basis in computing the shares to be distributed to each worker. The workers earn shares depending on whether they were called to work under an uncertain work schedule that HLI wholly determines. Under this set-up, intervening events that interrupt work and that are wholly dictated by HLI, effectively lessen the shares of stocks that a worker earns. This is far from the part-ownership of the company at a given point in time that the CARL and its implementing rules envisioned. The 30-year distribution period,

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on the other hand, violates the three month period that Section 11 of AO No. 10-1988 prescribes in the implementation of the distribution scheme. x x x [T]he HLI's SDP/SDOA authorized a slow incremental distribution of shares over a 30-year period. Thus, FWB participation, particularly over the early years, was minimal and the unearned and undistributed shares remained with HLI. This scheme totally runs counter to the concept of making the FWBs part-owners, through their stock participation, within the time that Section 11 requires for the implementation of the stock distribution scheme. Stated more bluntly, the FWBs largely remained farmers while the land supposedly subject to land reform remained with HLI. These SDP provisions, among others, prejudiced the FWBs and denied them of their rights under the law. Consequently, PARC Resolution No. 2005-32-01 is legally correct in revoking the SDP of HLI.

6. ID.; ID.; SIGNIFICANT CONSEQUENCES OF THE REVOCATION OF HLI'S SDP. — The revocation of the SDP/SDOA carries two significant consequences. The ***first*** is the compulsory coverage of HLI agricultural lands by the CARP, as the PARC ordered through its Notice of Coverage. This coverage should cover the whole 4,915.75 hectares of land subject of the SDOA, including the 500 hectares later sold to LIPCO, RCBC and the LRC, and the 80 hectares purchased by the government as part of the SCTEX. x x x the implementation of this coverage should be subject to the validity of the subsequent dealings involving specific parcels of the covered land. The ***second*** is the invalidity from the very beginning of the SDP/SDOA, both in its terms and in its implementation. Thus, **mutual restitution should take place**, *i.e.*, the parties are bound to return to each other what they received on account of the nullified SDP/SDOA. It is on this latter point that I diverge from the majority's ruling on the effects of the nullification of the SDP/SDOA.

7. ID.; ID.; ID.; HLI IS ENTITLED TO JUST COMPENSATION BASED ON THE COVERED LAND'S 1989 VALUE. — Since the land is subject to compulsory coverage under the CARL, **HLI is entitled to just compensation**. For purposes of just compensation, the taking should be reckoned not from the Court or the PARC's declaration of nullity of the SDP, but from May 11, 1989 — when the invalid SDOA/SDP was

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executed for purposes of compliance with the CARL's requirements. To repeat, **May 11, 1989** is the point in time when HLI complied with its obligation under the CARL as a corporate landowner, through the stock distribution mode of compliance. This is the point, too, when the parties themselves determined — albeit under a contract that is null and void, but within the period of coverage that the CARL required and pursuant to the terms of what this law allowed — that compliance with the CARL should take place. From the eminent domain perspective, this is the point when the deemed "taking" of the land, for agrarian reform purposes, should have taken place if the compulsory coverage and direct distribution of lands had been the compliance route taken. As the chosen mode of compliance was declared a nullity, the alternative compulsory coverage (that the SDOA was intended to replace) and the accompanying "taking" should thus be reckoned from May 11, 1989.

8. ID.; ID.; ID.; QUALIFIED FARMWORKERS BENEFICIARIES (FWBs) ARE ENTITLED TO ACTUAL POSSESSION OF THE LAND EXCEPT THE LANDS VALIDLY ACQUIRED BY LIPCO, RCBC, AND SCTEX. — The land subject to agrarian reform coverage under the terms of the CARL, as ordered by the DAR and confirmed by the PARC, covers the entire 4,915.75 hectares of agricultural land subject of the SDOA, including the 300 hectares later sold to LIPCO and RCBC, the 200 hectares sold to Luisita Realty, and the 80 hectares purchased by the government to form part of the SCTEX. ***However, the FWB ownership, based on agrarian reform coverage, should yield to the sale and transfer of the acquired lands — the 380 hectares sold — since these were validly acquired by LIPCO, RCBC and SCTEX, as discussed above.*** Since the sale and transfer of these acquired lands came after compulsory CARP coverage had taken place, **the FWBs are entitled to be paid for the 300 hectares of land transferred to LIPCO based on its value in 1989**, not on the ₱750 million selling price paid by LIPCO to HLI as proposed by the *ponencia*. This outcome recognizes the reality that the value of these lands increased due to the improvements introduced by HLI, specifically HLI's move to have these portions reclassified as industrial land while they were under its possession. Thus, unless it is proven that the ₱750 million is equivalent to the value of the land as of May 11, 1989 and excludes the value

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of any improvements that may have been introduced by HLI, I maintain that the land's 1989 value, as determined by the DAR, should be the price paid to the FWBs for the lands transferred to LIPCO and RCBC. On the other hand, **the FWBs are entitled to be paid the full amount of just compensation that HLI received from the government for the 80 hectares of expropriated land forming the SCTEX highway**. What was transferred in this case was a portion of the HLI property that was not covered by any conversion order. The transfer, too, came after compulsory CARP coverage had taken place and without any significant intervention from HLI. Thus, the whole of the just compensation paid by the government should accrue solely to the FWBs as owners.

9. ID.; ID.; ID.; HLI MUST PAY THE QUALIFIED FWBs YEARLY RENT FOR THE USE OF LAND FROM 1989. — Since land reform coverage and the right to the transfer of the CARL-covered lands accrued to the FWBs as of May 11, 1989, **HLI — which continued to possess and to control the covered land — should pay the qualified FWBs yearly rental** for the use and possession of the covered land up to the time HLI surrenders possession and control over these lands. As a detail of land reform implementation, the authority to determine the appropriate rentals belongs to the DAR, using established norms and standards for the purpose. Proper adjustment, of course, should be made for the sale of the acquired lands to LIPCO and to the government as no rentals can be due for these portions after their sale.

10. ID.; ID.; ID.; OPERATIVE FACT DOCTRINE IS NOT APPLICABLE; DISCUSSED. — While the *ponencia* affirms the revocation of the SDP, it declares that it "cannot close its eyes to certain '**operative facts**' that had occurred in the interim [the period between PARC's approval of the SDP up to its revocation]. x x x the revocation must, however, give way to the right of the original 6,296 qualified FWBs to choose whether they want to remain as HLI stockholders or not. The Court cannot turn a blind eye to the fact that in 1989, 93% of the FWBs agreed to the SDOA (also styled as the MOA) which became the basis of the SDP approved by PARC x x x." The *ponencia* justifies the application of the operative fact doctrine, "since the operative fact principle applies to a law or an **executive action**, the application of the doctrine to the

[nullification of] PARC Resolution No. 89-12-2 which is an executive action is correct." The *ponencia's* view proceeds from a misinterpretation of the term "executive action" to which the operative fact doctrine may be applied. The operative fact doctrine applies in considering the effects of a **declaration of unconstitutionality of a *statute* or a rule issued by the Executive Department that is accorded the same status as a statute.** The "executive action," in short, refers to those issuances promulgated by the Executive Department pursuant to their quasi-legislative or rule-making powers. Its meaning cannot be expanded to cover just about any act performed by the Executive Department, as that would be to negate the rationale behind the doctrine. Aside from being a principle of equity, the Court is also keenly aware that an underlying reason for the application of the operative fact doctrine is the presumption of constitutionality that statutes carry. Rules and regulations promulgated in pursuance of the authority conferred upon the administrative agency by law, partake of the nature of a statute and similarly enjoy the presumption of constitutionality. Thus, it is only to this kind of executive action that the operative fact doctrine can apply. The SDOA/SDP is neither a statute nor an executive issuance but, as mentioned, is a contract between the FWBs and the landowners. **A contract stands on a different plane than a statute or an executive issuance. When a contract is contrary to law, it is deemed void *ab initio*.** It produces no legal effects whatsoever, in accordance with the principle *quo nullum est nullum producit effectum*. Contracts do not carry any presumption of constitutionality or legality that those observing the law rely upon. For this reason, the operative fact doctrine applies only to a declaration of unconstitutionality of a statute or an executive rulemaking issuance, conferring legitimacy upon past acts or omissions done in reliance thereof prior to the declaration of its invalidity; the statute or the executive issuance, before its invalidity, was an operative fact to which legal consequences attached. To extend this same principle to an unconstitutional or illegal contract would be to invite chaos into our legal system. It will make the parties a law unto themselves, allowing them to enter into contracts whose effects will anyway be recognized as legal even if the contracts are subsequently voided by the courts. From this perspective, the operative fact doctrine that applies to unconstitutional statutes is clearly not relevant to the present case.

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11. ID.; ID.; ID.; FWBs MUST RETURN TO HLI THE BENEFITS THEY ACTUALLY RECEIVED BY VIRTUE OF THE SDP. — The nullity of a contract goes into its very existence, and the parties to it must generally revert back to their respective situations prior to its execution; restitution is, therefore, in order. **With the SDP being void and without effect, the FWBs should return everything they are proven to have received pursuant to the terms of the SDOA/SDP.**

MENDOZA, *J., separate opinion*:

1. LABOR AND SOCIAL LEGISLATIONS; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. 6657); SECTION 31 THEREOF, WHICH ALLOWS STOCK DISTRIBUTION PLAN (SDP) OF THE HACIENDA LUISITA, INC. (HLI), IS UNCONSTITUTIONAL; REASON. — [T]he distribution of shares of stock, not land, cannot be considered as compliance with the constitutional provision on agrarian reform. Section 31 of Republic Act *(R.A.)* No. 6657, which allows stock distribution, directly and explicitly contravenes Section 4, Article XIII of the Constitution. Doubtless, the SDP of petitioner Hacienda Luisita, Inc. *(HLI)*, which has as its basis Section 31 of R.A. No. 6657, is unconstitutional. Under the SDP, instead of being given lands, the Farmworkers/Beneficiaries *(FWBs)* were given shares of stocks in HLI, by which scheme, being in the minority, they have absolutely no control over the land. In fact, they can lose it. A case in point is the segregation and conversion of 300 hectares of HLI land from agricultural to non-agricultural purposes. When the 300 hectares were converted, transferred, mortgaged, and sold to pay an indebtedness, the FWBs had no say about it and effectively lost a big chunk of their land. In a genuine land reform, the qualified FWBs should be given, directly or collectively, ownership of the land they till with all legal rights and entitlement, subject only to the limitations under the law, like the retention limits, expropriation and payment of just compensation. Under a collective ownership, if they are not in control of the cooperative or association, it cannot be considered a compliance with the law.

2. ID.; ID.; LOTS SOLD TO LUISITA INDUSTRIAL PARK CORPORATION (LIPCO) AND RCBC BEING BUYERS IN GOOD FAITH SHOULD BE EXCLUDED FROM THE

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CARP COVERAGE AND THE FARMWORKERS BENEFICIARIES (FWBs) ARE ENTITLED TO RECEIVE THE PROCEEDS OF SAID SALES. — Regarding the 300 hectares sold to Luisita Industrial Park Corporation *(LIPCO)* and RCBC, again I am with the *ponencia* that they were buyers in good faith and, thus, said portions should be excluded from the CARP's compulsory coverage. Records disclose that the conversion of these lands was with the acquiescence of the FWBs and approved by the PARC after full compliance with R.A. No. 6657 and the DAR's applicable regulations. The only dispute on this is the proceeds of the sale. After the conversion was approved, Centennary Holdings sold it to LIPCO for ₱750 million. On the other hand, RCBC received approximately 184 hectares of land from LIPCO, through a *dacion en pago*, in payment for LIPCO's debt amounting to ₱431.7 million. There is no indication that LIPCO and RCBC, both of whom exercised due diligence, were on notice that there was a defect in the titles of the lands they purchased. The FWBs, however, are entitled to receive the proceeds of the sales to LIPCO and RCBC based on their value at the time of the taking plus legal interest.

3. ID.; ID.; LOT SOLD TO LUISITA REALTY CORPORATION (LRC) SHOULD BE SUBJECT TO COMPULSORY CARP COVERAGE. — As to the remaining 200 hectares (of the original 500 hectares converted from agricultural to non-agricultural use with the DAR's approval), which appear to have been sold by HLI to Luisita Realty Corporation *(LRC)*, they should be subject to compulsory CARP coverage. Unlike LIPCO and RCBC, LRC never assailed PARC Resolution No. 2005-32-01, or the DAR's Notice of Coverage order. Its silence and inaction may be deemed an acquiescence with the PARC decision to place the land under the compulsory coverage of the CARP. Certainly, LRC's situation is different from the two, particularly RCBC, who is a mortgagee and, later, payee or purchaser in good faith. LRC, however, should be reimbursed for what it had paid plus legal interest.

4. ID.; ID.; CONSEQUENCES OF HLI'S VIOLATION OF THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA). — There being a violation of the SDOA, the petition should be *denied* and PARC's Resolution No. 2005-32-01 revoking the SDP, as well as its Resolution No. 2006-34-01, denying

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the petitioner's motion for reconsideration should be *affirmed*, with the *modification* that the purchase of the 300-hectare portion by LIPCO and RCBC, as well as the expropriation of the 80-hectare portion for the SCTEX complex, should be considered as valid. Thus, the said portions should be beyond the compulsory CARP coverage. As a consequence of the violations, the subject lands should be distributed to the FWBs under the supervision of the DAR, who will determine just compensation, after proper audit and valuation of those already given and received and set off. Needless to state, the compensation should be with legal interest. I agree with the position of Justice Arturo Brion that the reckoning date for purposes of just compensation should be May 11, 1989, when the SDOA was executed. Said date is the time of the *taking* of the land for agrarian reform purposes.

CORONA, *C.J., dissenting opinion*:

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. 6657); THE ISSUE OF CONSTITUTIONALITY OF SECTION 31 THEREOF IS UNAVOIDABLE. — In this case, the question of constitutionality has been raised by the parties-in-interest to the case. In addition, any discussion of petitioner HLI's stock distribution plan necessarily and inescapably involves a discussion of its legal basis, Section 31 of RA 6657. More importantly, public interest and a grave constitutional violation render the issue of the constitutionality of Section 31 of RA 6657 unavoidable. Agrarian reform is historically imbued with public interest and, as the records of the Constitutional Commission show, **Hacienda Luisita has always been viewed as a litmus test of genuine agrarian reform**. Furthermore, the framers emphasized the primacy of the right of farmers and farmworkers to directly or collectively own the lands they till. The dilution of this right not only weakens the right but also debases the constitutional intent thereby presenting a serious assault on the Constitution.

2. ID.; ID.; FOUR REQUISITES TO DECIDE MOOT AND ACADEMIC CASES, PRESENT; APPLICATION. — First, a grave violation of the Constitution exists. Section 31 of RA 6657 runs roughshod over the language and spirit of

Section 4, Article XIII of the Constitution. The first sentence of Section 4 is plain and unmistakeable. It grounds the mandate for agrarian reform on the right of farmers and regular farmworkers, who are landless, **to own** directly or collectively the **land** they till. The express language of the provision is clear and unequivocal — agrarian reform means that farmers and regular farmworkers who are landless should be given direct or collective ownership of the land they till. That is their right. **Unless there is land distribution, there can be no agrarian reform**. Any program that gives farmers or farmworkers anything less than ownership of land fails to conform to the mandate of the Constitution. **In other words, a program that gives qualified beneficiaries stock certificates instead of land is not agrarian reform**. x x x Second, this case is of exceptional character and involves paramount public interest. In *La Bugal-B'Laan Tribal Association, Inc.*, the Court reminded itself of the need to recognize the extraordinary character of the situation and the overriding public interest involved in a case. Here, there is a necessity for a categorical ruling to end the uncertainties plaguing agrarian reform caused by serious constitutional doubts on Section 31 of RA 6657. While the *ponencia* would have the doubts linger, strong reasons of fundamental public policy demand that the issue of constitutionality be resolved now, before the stormy cloud of doubt can cause a social cataclysm. x x x To leave this issue unresolved is to allow the further creation of laws, rules or orders that permit policies creating, unintentionally or otherwise, means to avoid compliance with the foremost objective of agrarian reform — to give the humble farmer and farmworker the right to own the land he tills. To leave this matter unsettled is to encourage future subversion or frustration of agrarian reform, social justice and the Constitution. Third, the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public. Fundamental principles of agrarian reform must be established in order that its aim may be truly attained. One such principle that must be etched in stone is that no law, rule or policy can subvert the ultimate goal of agrarian reform, the actual distribution of land to farmers and farmworkers who are landless. Agrarian reform requires that such landless farmers and farmworkers be given direct or collective ownership of the land they till, subject only to the retention limits and the payment

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of just compensation. There is no valid substitute to actual distribution of land because the right of landless farmers and farmworkers expressly and specifically refers to a **right to own the land they till**. Fourth, this case is capable of repetition, yet evading review. As previously mentioned, if the subject provision is not struck down today as unconstitutional, the possibility of passing future laws providing for a similar option is ominously present. Indeed, what will stop our legislators from providing artificial alternatives to actual land distribution if this Court, in the face of an opportunity to do so, does not declare that such alternatives are completely against the Constitution? We would be woefully remiss in our duty of safeguarding the Constitution and the constitutionally guaranteed right of a historically marginalized sector if we allowed a substantial deviation from its language and intent.

3. ID.; ID.; STOCK DISTRIBUTION PLAN (SDP) OF HACIENDA LUISITA, INC. (HLI) IS CONTRARY TO THE PROVISIONS OF R.A. 6657 AND DAO NO. 10-1988. — [T]he stock distribution plan of petitioner HLI, TADECO's successor-in-interest, could not have been validly approved by the PARC as it was null and void for being contrary to law. Its essential terms, particularly the "man days" method for computing the number of shares to which a farmworker-beneficiary is entitled and the extended period for the complete distribution of shares to qualified farmworker-beneficiaries are against the letter and spirit of Section 31 of RA 6657, assuming that provision is valid, and DAO No. 10-1988.

4. ID.; ID.; THE REVOCATION OF THE PREVIOUSLY APPROVED HLI'S SDP HAS THE EFFECT OF REVIVING THE TRIAL COURT'S DECISION AND HACIENDA LUISITA SHOULD BE DISTRIBUTED TO QUALIFIED FARMWORKERS BENEFICIARIES. — Even assuming that the approval could have been validly made by the PARC, the subsequent revocation of such approval meant that there was no more approval to speak of, that the approval has already been withdrawn. Thus, in any case, the decision of the trial court should be revived, albeit on appeal. Such revival means that petitioner HLI cannot now evade its obligation which has long be overdue, Hacienda Luisita should be distributed to qualified farmworker-beneficiaries.

5. ID.; ID.; THE EQUITIES OF THE CASE CALL FOR THE APPLICATION OF THE OPERATIVE FACT DOCTRINE BUT SUBJECT TO SIGNIFICANT QUALIFICATIONS. — I am willing to concede that the equities of the case might possibly call for the application of the doctrine of operative facts. The Court cannot with a single stroke of the pen undo everything that has transpired in Hacienda Luisita *vis-à-vis* the relations between petitioner HLI and the farmworker-beneficiaries resulting from the execution of the stock distribution plan more than two decades ago. A simplistic declaration that no legal effect whatsoever may be given to any action taken pursuant to the stock distribution plan by virtue of its nullification will only result in unreasonable and unfair consequences in view of previous benefits enjoyed and obligations incurred by the parties under the said stock distribution plan. Let me emphasize, however, that this tenuous concession is not without significant qualifications. First, while operative facts and considerations of fairness and equity might be considered in disposing of this case, the question of constitutionality of Section 31 of RA 6657 and, corollarily, of petitioner HLI's stock distribution plan, should be addressed squarely. As the said provision goes against both the letter and spirit of the Constitution, the Court must categorically say in no uncertain terms that it is null and void. The same principle applies to petitioner HLI's stock distribution plan. Second, pursuant to both the express mandate and the intent of the Constitution, the qualified farmer-beneficiaries should be given ownership of the land they till. That is their right and entitlement, which is subject only to the prescribed retention limits and the payment of just compensation, as already explained. Due to considerations of fairness and equity, however, those who wish to waive their right to actually own land and instead decide to hold on to their shares of stock may opt to stay as stockholders of petitioner HLI. Nonetheless, **this scheme should apply in this case only**. Third, the proper action on the instant petition should be to **dismiss** it. For how can we grant it when it invites us to rule against the constitutional right of landless farmworker-beneficiaries to actually own the land they till? How can we sustain petitioner HLI's claim that its stock distribution plan should be upheld when we are in fact declaring that it is violative of the law and of the Constitution? Indeed, to affirm the correctness of PARC

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Resolution No. 2005-32-01 dated December 22, 2005 revoking the stock distribution plan and directing the compulsory distribution of Hacienda Luisita lands to the farmworker-beneficiaries and, at the same time, grant petitioner HLI's prayer for the nullification of the said PARC Resolution is an exercise in self-contradiction.

SERENO, *J., dissenting opinion*:

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (CARL); THE CONSTITUTIONAL VALIDITY OF SECTION 31 THEREOF WAS NOT TIMELY RAISED AND IS NOT THE *LIS MOTA* IN THIS CASE. — With respect to the timeliness of the issue, respondent-intervenor FARM did not raise the constitutional question at the earliest possible time. The petitions filed in the PARC, which precipitated the present case, did not contain any constitutional challenge against the stock distribution option under the CARL. x x x Respondent-intervenor FARM would argue that it raised the constitutionality issue in its position paper at the level of the PARC. However, this is a late attempt on its part to remedy the situation and comply with the foregoing requisite on timeliness in the exercise of judicial review. Nothing in the initiatory petitions of private respondents Supervisory Group and AMBALA assailed the inherent invalidity of stock distribution options as provided in Section 31 of the CARL. Respondent-intervenor FARM posits that it fully complied with the requirement of timeliness under the doctrine of judicial review since the earliest possible opportunity to raise the issue must be with a **court** with the competence to resolve the constitutional question, citing as basis *Serrano v. Gallant Maritime Services, Inc*. This case is significantly different from *Serrano* as to render the latter's legal conclusions inapplicable to the present situation. x x x Even assuming *arguendo* that the rule requiring the timeliness of the constitutional question can be relaxed, the Court must refrain from making a final determination on the constitutional validity of a stock distribution option at this time because it is not the *lis mota* of the present controversy and the case can be disposed of on some other ground. x x x A court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid unless such question is raised by

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the parties; when raised, if the record presents some other ground upon which the court may rest its judgment, the latter course will be adopted and the constitutional question will be left for consideration until a case arises wherein a decision upon such question will be unavoidable. The Court will not shirk its duty of wielding the power of judicial review in the face of gross and blatant acts committed by other branches of government in direct violation of the Constitution; but neither will it be overly eager to brandish it when there are other available grounds that would avoid a constitutional clash. It will be recalled that what the qualified beneficiaries assailed in the PARC proceedings was the failure on the part of petitioner HLI to fulfill its obligations under the SDOA, and what they prayed for was for the lands to be the subject of direct land transfer. The question of constitutionality of a stock distribution option can be avoided simply by limiting the present inquiry on the provisions of the SDOA and its implementation. Whether the PARC committed grave abuse of discretion in recalling or revoking the approval of the SDOA need not involve a declaration of unconstitutionality of the provisions of the CARL on stock distribution. There is no "paramount public interest" that compels this Court to rule on the question of constitutionality. As a legislative act, the CARL enjoys the presumption of constitutionality. Absent any glaring constitutional violation or evident proof thereof, the Court must uphold the CARL. Indeed, paramount public interest is better served by precluding a finding on the CARL at this point, since such finding could unfairly impact other corporate landowners and farmer beneficiaries under a stock distribution option in other parts of the country who are not parties to the instant case.

2. ID.; ID.; ID.; THE STOCK DISTRIBUTION OPTION UNDER THE CARL IS NOT EXPRESSLY PROHIBITED BY THE CONSTITUTION. — While we do not rule on the constitutionality of stock distribution option, we also need to state that there appears to be no clear and unequivocal prohibition under the Constitution that expressly disallows stock distribution option under the provisions on agrarian reform. x x x The primary constitutional principle is to allow the tiller to exercise rights of ownership over the lands, but it does not confine this right to absolute direct ownership. Farmworkers are even allowed to simply have a share in the fruits of the land they till for as long as what they receive is just and fair. The framers of the

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Constitution established the right of landless farmers and regular farmworkers to own the lands they till directly or collectively, but left the identification of the means of ownership to Congress.

3. ID.; ID.; THE PRESIDENTIAL AGRARIAN REFORM COUNCIL (PARC) HAS JURISDICTION OVER THE QUESTION OF VALIDITY OF AND/OR COMPLIANCE WITH THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA). — Jurisdiction over a subject matter is conferred by law. Section 50 of the CARL and Section 17 of Executive Order No. 229 vests in the DAR the primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all matters involving **the implementation of agrarian reform**. The DAR's primary and exclusive jurisdiction includes authority over agrarian disputes, which also covers "disputes on the **terms and conditions of the transfer of ownership** from landowners to agrarian reform beneficiaries." Congress provides the exclusive jurisdiction of the DAR in agrarian disputes. x x x Since a stock distribution option is an alternative method of transferring ownership of agricultural land to FWBs, any controversy regarding compliance with the approved terms and conditions of such transfer is necessarily an agrarian dispute that is within the primary and exclusive jurisdiction of the DAR, and necessarily the PARC. The function of requiring approval of the compliance of the SDOA is precisely to ensure compliance with the earlier approval. The CARL could not have tolerated a situation where qualified FWBs would be without any recourse against a landowner who failed to live up to its promises under a stock distribution agreement. General jurisdiction over agrarian disputes over stock distribution agreements necessarily implies a specific authority to monitor and enforce implementation of the same. As distinguished from express powers, implied powers are those that can be inferred or are implicit in the wordings or conferred by necessary or fair implication of the enabling act. x x x It must be clarified that the power to revoke or recall approval of the agreement resides only in the PARC, and does not extend to the DAR. The DAR itself recognized the primacy of the PARC's evaluation and assessment of a stock distribution plan. The continuing authority of the PARC to monitor and ensure proper implementation of a stock distribution option is consistent with its power to order the forfeiture of agricultural lands in

case of the landowner's failure to distribute the stocks. The CARL expressly provides for the compulsory coverage of the agricultural lands if there is no distribution of the stocks to qualified FWBs. In fact, the PARC is duty bound to subject the agricultural lands of the landowner to compulsory coverage if stock distribution does not materialize. In the instant case, the complaints of the qualified FWBs were properly lodged with the PARC, which had earlier given its approval of the agreement but has yet to render approval of the compliance. It must be noted that the SDOA under question is extraordinary since it provided a longer period of thirty years for the distribution of the shares to the qualified FWBs. Rather than immediately awarding the entire lot of shares of stock, petitioner HLI opted to spread out and prolong the distribution. The PARC was not in a position to immediately render approval of the compliance since petitioner HLI still had three decades before it could implement a complete stock distribution in favor of the qualified FWBs.

4. ID.; ID.; ID.; DISPUTES OVER SDOA ARE INHERENTLY AGRARIAN IN NATURE. — The determination of whether the dispute under a stock distribution option is agrarian, civil or corporate in nature relies on the allegations of the complaint, the purported relationship between the contending parties and the rights sought to be enforced. In this case, petitioner HLI and the farm workers share multiple relationships that can be the source of rights and obligations between them. Primarily, petitioner HLI's relationship with the farm workers is that of a corporate landowner and qualified beneficiary under the CARL. But they also share an employer-employee relationship, insofar as the farm workers receive salaries and benefits from the corporation. There is likewise a tri-partite civil and contractual relationship arising from the SDOA between petitioner HLI (the spin-off corporation), TADECO (the original corporate landowner), and the qualified FWBs. Finally, the farm workers are also stockholders of petitioner HLI, having been awarded shares under the SDOA. Indeed, these various relationships give rise to distinct rights and prescribe separate remedies under the law. However, the overriding consideration for the stock distribution agreement under the CARL is the relationship of landowner-farm worker, which was the legal basis for the parties to have entered into the SDOA in the first place. Petitioner HLI and TADECO signed the SDOA precisely

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because the farm workers who agreed thereto were identified as qualified FWBs entitled to the benefits under the CARL. Similarly, the farm workers' acquisition of the additional status of stockholders of petitioner HLI arose out of their original status as qualified FWBs. Hence, all disputes arising from the stock distribution must be viewed in light of this principal juridical tie of corporate landowner and qualified FWBs. Parties cannot invoke other incidental relationships (civil or corporate) to deprive the PARC of its primary and exclusive jurisdiction over complaints filed by qualified FWBs against a stock distribution agreement, which is invariably an agrarian dispute.

5. ID.; ID.; LEGAL AND FACTUAL BASIS TO RECALL/ REVOKE THE APPROVAL OF THE SDOA, PRESENT; THE SDOA VIOLATED THE PROVISIONS ON STOCK DISTRIBUTION OPTION UNDER THE CARL. — The SDOA grossly violated the provisions of the CARL with respect to the stock distribution option when its basis for distributing the shares was made on the ground of its continuing determination of the man-hours served by the qualified FWBs. The rolling policy of petitioner HLI is contrary to the intent of stock distribution option under the CARL. x x x [C]ontrary to x x x fixed minimum ratio, petitioner HLI adopted a wholly variable and mobile criterion — the number of shares would be based on the number of man-days each qualified FWB logged in every year. Instead of receiving an equal amount, farmworkers under the SDOA would receive varying number of shares depending on the man-days rendered. Thus, if some of the 6,296 farmworkers served more man-days than the others, then they would be entitled to more shares. The scheme is in clear violation of the policy of equal number of shares as a minimum ratio for all qualified FWBs. Worse, the qualified FWBs' entitlement to receipt of shares was made on a rolling basis at the end of each year for the next thirty years. The number of shares was not only variable depending on the number of man-days served, but also on the time period when these man-days were served. Under the SDOA, there would be a yearly and partial distribution of shares to the qualified FWBs based on the annual number of man-days performed. Hence, qualified FWBs who worked in a previous year, but failed to get the same number of man-days or failed to work at all in the succeeding year, would not receive an equivalent number of shares at the end of the year. Moreover, persons who were not part of the

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original 6,296 farmworkers, but were subsequently employed by petitioner HLI, would still be entitled to annual proportionate shares of stock under the SDOA. Thus, the original FWBs were deprived of their guaranteed equal shareholdings by the proportional allocation of stocks to farmworkers who were not even employed at the time of the signing of the SDOA. The variable determination of the number of shares to which qualified FWBs were entitled resulted in the **dilution** of their shares, since the number of recipients "ballooned" through time (10,502 FWBs) but the number of stocks to be distributed remained the same. x x x The determination of qualified FWBs' shares based on the rolling criterion of man-days resulted in an expanded list of beneficiaries. Had the 6,296 qualified FWBs opted for direct land transfer, they would not have worried about sharing their titles to the land with other farm workers who came to work in Hacienda Luisita after the SDOA. Under the land transfer option, the finite parcel of land is directly awarded to identified FWBs with titles and documents to evidence their individual ownership to the exclusion of others. In contrast, the SDOA allowed the number of beneficiaries to balloon to 10,502 stockholder-beneficiaries (and growing) for as long as they performed work in the farm. Regardless of whether they were original residents in the area or migrants from nearby provinces, subsequent farm workers could be included and thus, expand the number of recipients. This in turn diluted the rights and benefits the original FWBs should have enjoyed under the SDOA *vis-à-vis* the newer stockholders. On this ground alone, there is sufficient basis to recall and/or revoke the SDOA since it is contrary to the intent of a stock distribution to existing and qualified FWBs.

6. ID.; ID.; ID.; PROLONGED PERIOD OF DISTRIBUTION OF SHARES TO FARMWORKERS BENEFICIARIES (FWBs) IS INEQUITOUS AND OPPRESSIVE. — The piecemeal distribution of the shares over thirty years is an oppressive form of diminishing the value of the shares and is prejudicial to the interests of the FWBs. Apportioning the number of shares to the FWBs over a prolonged period reduces their capacity to enjoy their rights completely and immediately. For example, if petitioner HLI had declared cash dividends of ₱1.00 per share in the fifteenth year of distribution, then qualified FWBs would enjoy only half of the dividends owed them since they had yet to receive the other half of the shares

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allotted to them (assuming, of course, that they were to receive the same number of shares each year). Rather than enjoy the full benefit of the shares of stock due and owed them, the FWBs are made to wait for three decades before they can appreciate the full benefits as a stockholder-beneficiary of petitioner HLI. The inequity of the thirty-year period is highlighted when it is compared to the situation of an immediate land transfer. In a land transfer, a FWB can immediately feel the full benefit of land redistribution under the CARL upon the award of an emancipation patent or certificate of land ownership award and his actual physical possession of the land. In sharp contrast to the SDOA, the qualified FWBs were deprived of full ownership of the entire shareholdings due them under the staggered stock distribution scheme. Qualified FWBs, regardless of their age or health conditions, had to continue working for petitioner HLI for a period of thirty years if they wanted to realize the complete benefits of the SDOA. The protracted award of stocks nurtured a culture of forced dependency upon petitioner HLI on the part of the qualified FWBs. No other conclusion can be drawn from the two year period provided for in the land and stock transfer under the CARL except that full transfer of benefits to the landless farmers under the land reform program should be immediate. The shortened period for distribution should likewise apply in cases of the PARC approval of the stock distribution scheme. It would, thus, be reasonable to expect that all the shares of petitioner HLI allocated to the qualified FWBs would have been completely and absolutely distributed to them **within two years** from the PARC's approval of the SDOA, or no later than 14 November 1991. In fact, the DAR was more exacting when it required the approved stock distribution plan be implemented **within three months** from receipt of the PARC approval. It was wrong for the DAR Special Team to allow implementation within **ten years**. The two-year period is reasonably sufficient to realize the full transfer of shares and for qualified FWBs to understand and familiarize themselves with their rights and privileges as corporate stockholders. Although operational and practical considerations may possibly permit some impediment to the automatic and complete transfer of shares, the gradual build-up of shares of stock for a period of thirty years is simply wrong and defeats the objective of actual redistribution of land ownership to the farmers. **The CARL never envisioned the**

unreasonable delay in qualified FWBs' enjoyment of the benefits, which would have prolonged their suffering as landless farmers, especially when compared to the promptness of a land transfer option. x x x [T]he thirty-year period of distributing shares under the SDOA is **detrimental** to the qualified FWBs; they are unable to enjoy their entitlement under a stock distribution scheme, since they have to wait several years before full transfer of all the shares due and owing to them. Agrarian reform and land distribution was made to benefit the farmer by allowing immediate use of the redistributed land or rights thereunder while stretching the financial obligations or commitments out over manageable periods of time. The SDOA achieves the complete opposite by delaying the FWBs' acquisition of full rights as stockholders, and thus, must be struck down.

7. ID.; ID.; ID.; THE ABSENCE OF DAR VERIFICATION AND AUDIT EXAMINATION ON THE VALUES OF AGRICULTURAL LANDS AND HLI'S NON-LAND ASSETS CREATES SUSPICION ON THE CORRECTNESS OF THE NUMBER OF SHARES DISTRIBUTED UNDER THE SDOA. — The value ascribed to the assets of the corporate landowner, especially the agricultural lands, is crucial as it determines the number of shares to be distributed to the qualified FWBs. Under a stock distribution option, the qualified FWBs are entitled to a proportion of the shares in accordance with the value of the agricultural lands actually devoted to agricultural activities in relation to the company's total assets. x x x If the valuation given to the agricultural land is decreased the number of shares of each qualified FWB decreases. Moreover, the number of shares for each qualified FWB will decrease if the value of the company's total assets increases without a corresponding increase in the value of its agricultural lands. Given the significance of the valuation to the dynamics of stock distribution, the DAR required that the valuation of the corporate assets under the stock distribution plan be subject to verification and audit examination by the DAR and based on the DAR's own valuation guidelines. In this case, the values of the agricultural land or petitioner HLI's assets were never subjected to DAR verification or audit examination. When TADECO transferred the agricultural land together with other assets and liabilities, there was only the "imprimatur of the Securities and Exchange Commission by reason of its approval of the

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increase in the authorized capital stock" of petitioner HLI. Petitioner HLI did not demonstrate that the values ascribed therein, especially to the agricultural land, were verified and audited by the DAR based on its own guidelines. The absence of the DAR verification and audit of the values of the agricultural lands and petitioner HLI's total assets creates suspicion on the correctness of the number of shares distributed under the SDOA. Aside from the agricultural land, petitioner HLI included other non-land assets, such as machineries, land improvements and long term receivables, to increase the value of the total assets. However, inclusion of these other non-land assets served to diminish the ratio of the agricultural land to the total assets, and consequently decreased the proportional share to which the qualified FWBs were entitled to. x x x TADECO, as the previous agricultural landowner, preempted the determination of the lands to be covered under the CARP by selecting which of the agricultural lands it would transfer to petitioner HLI and consequently, subject to the SDOA. The DAR never approved the exclusion of the other lands that TADECO kept for itself. It seems incongruous to the intention of the CARP under a stock distribution agreement, to let the corporate landowner choose and select which of its agricultural lands would be included and which ones it would retain for itself. Serious doubts are entertained with respect to the process of inclusion and exclusion of agricultural lands for CARP coverage employed by the corporate landowner, especially since the excluded land area (1,527 hectares) involves one-third the size of the land TADECO surrendered for the SDOA (4,916 hectares). The exclusion of a substantial amount of land from the SDOA is highly suspicious and deserves a review by the DAR. Whether these lands were properly excluded should have been subject to the DAR's determination and validation. Thus, the DAR is tasked to determine the breadth and scope of the portion of the agricultural landholdings of TADECO and petitioner HLI that should have been the subject of CARP coverage at the time of the execution of the SDOA on 11 May 1989.

8. ID.; ID.; RECALL OF THE APPROVAL OF THE SDOA DOES NOT CONSTITUTE VIOLATION OF DUE PROCESS OR NON-IMPAIRMENT CLAUSE. — [P]etitioner HLI assails the failure on the part of public respondent PARC to afford it an opportunity to submit evidence to support its case. However, the records show that petitioner HLI was able to present its

opposition to private respondents' petitions in the proceedings below. Public respondent PARC even issued an order requesting petitioner HLI to submit comments and/or oppositions to the petitions filed by private respondents Supervisory Group and AMBALA and also furnishing it copies of the said petitions. x x x [P]etitioner HLI's insistence on the non-impairment clause is misplaced, as it deals with a fundamental right against the exercise of legislative power, and not of judicial or quasi-judicial power. x x x [T]he recall/revocation of the SDOA is necessarily an exercise of the PARC's quasi-judicial power. Public respondent PARC was made to decide conflicting claims based on petitioner HLI's purported violations of the provisions of the SDOA. There was an adjudication of the respective rights of the parties to the SDOA, as well as the validity of the SDOA. The questioned PARC resolution was not a legislative act or an administrative order that prescribed regulations applicable to all kinds of stock distribution options; it was a decision on the competing allegations of non-performance under the SDOA, which was sought to be enforced. No less than petitioner HLI's counsel concedes that the assailed acts of public respondent PARC were not legislative in nature for purposes of invoking the non-impairment clause under the Constitution.

9. ID.; ID.; EFFECTS OF REVERSION OF HLI'S LANDS TO COMPULSORY COVERAGE UNDER THE CARL; HLI IS ENTITLED TO JUST COMPENSATION FIXED AT THE TIME OF ACTUAL TAKING AND NOT AT THE TIME OF SDOA EXECUTION TWENTY YEARS AGO. — The change of modality, from the alternative mode of stock distribution option to the general rule of direct land redistribution under compulsory coverage, is explicitly sanctioned under Section 31 of the CARL. x x x In exchange, petitioner HLI as the previous landowners is entitled to the payment of just compensation of the value of the land at the time of the taking. Since the award of direct land transfer is being settled by the Court only now, then the value of the property should be similarly pegged at this point. The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property as between one who receives and one who desires to sell, if fixed **at the time of the actual taking by the government**.

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For purposes of just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of taking. Therefore, the proper reckoning period to determine the value of the lands of petitioner HLI and/or TADECO is at the time of the taking, which approximates the fair market value of the properties as they stand now, and not as they were two decades ago. The fair market value takes into consideration the evolving nature of the land and its appreciated value, arising from the improvements introduced by petitioner HLI into the area, as well as the development in neighboring lands. I differ from the position of Justice Brion that would reckon the taking from the time the SDOA was entered into, on 11 May 1989, and yet deprive petitioner HLI of interest payments in the interim. The proposal amounts to undue hardship on the part of petitioner HLI as the previous landowner. While it is the duty of the Court to protect the weak and the underprivileged, this duty should not be carried out to such an extent as to deny justice to the landowner. Pegging the value of the property to the time of the execution of the SDOA almost twenty years prior will undoubtedly affect the valuation of the property. The improvements there and the developments in neighboring areas contributed to the increase in the land's value, regardless of whether they were introduced by petitioner HLI or not. The appreciation of the value will not be accounted for if the price is to be pegged at 1989. The increases in value cannot be ignored or taken away from petitioner HLI, if compensation to it as a landowner is to be considered just. "The word 'just' is used to intensify the meaning of the word 'compensation' and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample." Compensation cannot be real, substantial, full and ample if the price paid for the property expropriated under CARL is made to retroact the value of the land to more than two decades prior to the actual taking.

10. ID.; ID.; ID.; THE OPERATIVE FACTS DOCTRINE IS INAPPLICABLE; REASONS. — The doctrine of operative facts cannot apply either for two important reasons: (1) it will legitimize the injustice committed to the FWBs when their collective shares were arbitrarily reduced to only 33% of petitioner HLI through the undervaluation of the transferred assets; and (2) it will legitimize a second illegal reduction of the shares of the FWBs when more stockholders were added

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to their collective group. This Court cannot allow them to waive the rights that were granted to them under the social justice clause of the Constitution. It strains reason how qualified FWBs can be allowed the "false choice" of agreeing to a patently illegal SDO scheme, especially when their approval of the SDOA will not even improve their standing in the corporation, but only allowed to continue being minority stockholders. The vulnerability of qualified FWBs under the voting option is underscored by their current economic hardships and their desperate need for immediate financial assistance[.]

11. ID.; ID.; ID.; REVERSION OF HLI'S AGRICULTURAL LANDS TO CARL COVERAGE WILL NOT RESULT IN AUTOMATIC DISSOLUTION OF HLI OR DISSIPATION OF ITS ASSETS. — The compulsory coverage of the agricultural lands of petitioner HLI will not necessarily result in its automatic dissolution as a corporate entity. It must be remembered that the "sale" of the agricultural lands in this instance is not the ordinary business transfer of corporate assets as approved by petitioner HLI's stockholders in accordance with the Corporation Code; the transfer of the agricultural land to qualified FWBs is in the exercise of the state's expropriation powers to take property for a legal objective (agrarian land reform) upon due payment of just compensation. Neither can the taking of the agricultural lands of petitioner HLI (which are only 33.296% of its total assets) be considered as substantially all of its assets under the Corporation Code, since the corporation is not rendered incapable of engaging in the business of "planting, cultivation, production, purchase, sale, barter or exchange of all agricultural products." x x x [T]he expropriation of the agricultural lands under the CARL will not result in the dissipation of the assets of petitioner HLI, since it will be compensated by the government for the agricultural lands expropriated, proceeds from which can be used to continue with the business, to fund the lease of agricultural lands, or to pay for any debts or liabilities incurred by petitioner HLI. Whether the stockholders of petitioner HLI will agree to continue with the business or initiate the process of dissolution is a matter that will have to be addressed in another forum, and not before the Court at this time.

12. ID.; ID.; RCBC AND LIPCO ARE INNOCENT PURCHASERS FOR VALUE; HLI SHOULD RETURN THE PROCEEDS

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OF THE SALE. — Since the conversion of the 500-hectare reclassified lands in Hacienda Luisita was in compliance with the guidelines set by the law and duly approved by the DAR, then petitioners-in-intervention RCBC and LIPCO, as subsequent purchasers for fair value of a portion of the property and holders of titles thereto, cannot now be defeated in their rights. An innocent purchaser for value and in good faith is one who "buys the property of another without notice that some other person has a right to or interest in the property and who pays the full and fair price for it at the time of the purchase, or before they get notice of some other persons' claim of interest in the property." A person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need for inquiring further, except when the party has actual knowledge of the facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title of the vender or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation. x x x At the time petitioners-in-intervention bought the converted properties, there was nothing in the titles thereto that would alert them to any claim or defect. x x x That the property was previously agricultural land that was subject to conversion is not sufficient notice to deny the rights of petitioners-in-intervention as innocent purchasers for value. At the time LIPCO purchased the property for purposes of establishing an industrial estate on 30 July 1998, the land had already been converted from an agricultural into industrial land, with the imprimatur of the DAR no less. If at all, the DAR's conversion order was precisely what assured LIPCO that the property was approved for sale and not subject to CARP coverage. x x x That the land was covered by a reclassification ordinance of the local government and by the DAR Conversion Order only bolstered their good faith belief in the validity of the sellers' titles to the property. x x x With respect to petitioner-in-intervention RCBC, the Court has previously exacted more than just ordinary diligence from banks and other financial institutions in the conduct of their financial dealings with real properties. x x x In the instant case, petitioner-in-intervention RCBC has displayed an observance of extraordinary degree of diligence in acquiring the property from LIPCO. Petitioner-in-intervention conducted ocular inspections and investigations

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> of the properties to be the subjected to *dacion en pago*, in accordance with its credit policies. It likewise confirmed that LIPCO had possession over the lands, and that there was no other possessor or occupant thereof. It even confirmed the ownership and possession of LIPCO, with the residents in the vicinity endorsing the latter's plans to create an industrial estate. x x x [T]he Court should not, however, turn a blind eye to the fact that the proper recipients of the purchase price for the transferred and converted lands are the FWBs, under the compulsory coverage scenario. Had the qualified FWBs opted for direct land transfer of the entire Hacienda Luisita lands, then Centennary Holdings, LIPCO and RCBC would have all been dealing directly with them for the transfer and purchase of the 300-hectare lands. Instead, the stock distribution option placed the proceeds of the sale of these converted lands unto the hands of petitioner HLI as the corporate landowner. Considering that the land is to be redistributed to the qualified FWBs, and that the 300-hectare converted lands are no longer feasible as agricultural lands, it is to the best interest of justice and equity that petitioner HLI should return the amounts received from the sale and/or transfer of the converted lands, net of the taxes and other legitimate expenses actually incurred in the sale of the land. This is without prejudice to the reasonable offset of the amounts owed by the qualified FWBs to petitioner HLI from the benefits they received as stockholders under the SDOA.

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D E C I S I O N

VELASCO, JR., *J.*:

"Land for the landless," a shibboleth the landed gentry doubtless has received with much misgiving, if not resistance, even if only the number of agrarian suits filed serves to be the norm. Through the years, this battle cry and root of discord continues to reflect the seemingly ceaseless discourse on, and great disparity in, the distribution of land among the people, "dramatizing the increasingly urgent demand of the dispossessed x x x for a plot of earth as their place in the sun."[2] As administrations and political alignments change, policies advanced, and agrarian reform laws enacted, the latest being what is considered a comprehensive piece, the face of land reform varies and is masked in myriads of ways.The stated goal, however, remains the same: clear the way for the true freedom of the farmer.[3]

Land reform, or the broader term "agrarian reform," has been a government policy even before the Commonwealth era. In fact, at the onset of the American regime, initial steps toward land reform were already taken to address social unrest.[4] Then, under the 1935 Constitution, specific provisions on social justice and expropriation of landed estates for distribution to tenants as a solution to land ownership and tenancy issues were incorporated.

In 1955, the Land Reform Act (Republic Act No. [RA] 1400) was passed, setting in motion the expropriation of all tenanted estates.[5]

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[2] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, July 14, 1989, 175 SCRA 343, 352.

[3] *Id.* at 392.

[4] Yujiro Hayami, *et al.*, TOWARD AN ALTERNATIVE LAND REFORM PARADIGM: A PHILIPPINE PERSPECTIVE 53 (1990).

[5] *Id.*

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On August 8, 1963, the Agricultural Land Reform Code (RA 3844) was enacted,[6] abolishing share tenancy and converting all instances of share tenancy into leasehold tenancy.[7] RA 3844 created the Land Bank of the Philippines (LBP) to provide support in all phases of agrarian reform.

As its major thrust, RA 3844 aimed to create a system of owner-cultivatorship in rice and corn, supposedly to be accomplished by expropriating lands in excess of 75 hectares for their eventual resale to tenants. The law, however, had this restricting feature: its operations were confined mainly to areas in Central Luzon, and its implementation at any level of intensity limited to the pilot project in Nueva Ecija.[8]

Subsequently, Congress passed the Code of Agrarian Reform (RA 6389) declaring the entire country a land reform area, and providing for the automatic conversion of tenancy to leasehold tenancy in all areas. From 75 hectares, the retention limit was cut down to seven hectares.[9]

Barely a month after declaring martial law in September 1972, then President Ferdinand Marcos issued Presidential Decree No. 27 (PD 27) for the "emancipation of the tiller from the bondage of the soil."[10] Based on this issuance, tenant-farmers, depending on the size of the landholding worked on, can either purchase the land they tilled or shift from share to fixed-rent leasehold tenancy.[11] While touted as "revolutionary," the scope of the agrarian reform program PD 27 enunciated covered only tenanted, privately-owned rice and corn lands.[12]

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[6] Bureau of Agrarian Reform Information and Education (BARIE) & Communications Development Division (CDD), AGRARIAN REFORM HISTORY 19 (2006).

[7] *Salmorin v. Zaldivar*, G.R. No. 169691, July 23, 2008, 559 SCRA 564, 572.

[8] Yujiro Hayami, *et al.*, *supra* note 4, at 57.

[9] *Id.*

[10] *Id.*

[11] *Id.* at 60; BARIE & CDD, *supra* note 6, at 21.

[12] BARIE & CDD, *supra* note 6, at 22.

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Then came the revolutionary government of then President Corazon C. Aquino and the drafting and eventual ratification of the 1987 Constitution. Its provisions foreshadowed the establishment of a legal framework for the formulation of an expansive approach to land reform, affecting all agricultural lands and covering both tenant-farmers and regular farmworkers.[13]

So it was that Proclamation No. 131, Series of 1987, was issued instituting a comprehensive agrarian reform program (CARP) to cover all agricultural lands, regardless of tenurial arrangement and commodity produced, as provided in the Constitution.

On July 22, 1987, Executive Order No. 229 (EO 229) was issued providing, as its title[14] indicates, the mechanisms for CARP implementation. It created the Presidential Agrarian Reform Council (PARC) as the highest policy-making body that formulates all policies, rules, and regulations necessary for the implementation of CARP.

On June 15, 1988, RA 6657 or the *Comprehensive Agrarian Reform Law of 1988*, also known as CARL or the CARP Law, took effect, ushering in a new process of land classification, acquisition, and distribution. As to be expected, RA 6657 met stiff opposition, its validity or some of its provisions challenged at every possible turn. *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*[15] stated the observation that the assault was inevitable, the CARP being an untried and untested project, "an experiment [even], as all life is an experiment," the Court said, borrowing from Justice Holmes.

The Case

In this Petition for *Certiorari* and Prohibition under Rule 65 with prayer for preliminary injunctive relief, petitioner Hacienda

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[13] Yujiro Hayami, *et al.*, *supra* note 4, at 71.

[14] Providing the Mechanism for the Implementation of the Comprehensive Agrarian Reform Program.

[15] *Supra* note 2.

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Luisita, Inc. (HLI) assails and seeks to set aside PARC Resolution No. 2005-32-01[16] and Resolution No. 2006-34-01[17] issued on December 22, 2005 and May 3, 2006, respectively, as well as the implementing Notice of Coverage dated January 2, 2006 (Notice of Coverage).[18]

The Facts

At the core of the case is Hacienda Luisita de Tarlac (Hacienda Luisita), once a 6,443-hectare mixed agricultural-industrial-residential expanse straddling several municipalities of Tarlac and owned by Compañia General de Tabacos de Filipinas (Tabacalera). In 1957, the Spanish owners of Tabacalera offered to sell Hacienda Luisita as well as their controlling interest in the sugar mill within the *hacienda*, the Central Azucarera de Tarlac (CAT), as an indivisible transaction. The Tarlac Development Corporation (Tadeco), then owned and/or controlled by the Jose Cojuangco, Sr. Group, was willing to buy. As agreed upon, Tadeco undertook to pay the purchase price for Hacienda Luisita in pesos, while that for the controlling interest in CAT, in US dollars.[19]

To facilitate the adverted sale-and-purchase package, the Philippine government, through the then Central Bank of the Philippines, assisted the buyer to obtain a dollar loan from a US bank.[20] Also, the Government Service Insurance System (GSIS) Board of Trustees extended on November 27, 1957 a PhP 5.911 million loan in favor of Tadeco to pay the peso price component of the sale. One of the conditions contained in the approving GSIS Resolution No. 3203, as later amended by Resolution No. 356, Series of 1958, reads as follows:

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[16] *Rollo*, pp. 100-101.

[17] *Id.* at 782-800.

[18] *Id.* at 103-106.

[19] *Id.* at 3644, Memorandum of HLI.

[20] *Id.* at 3809, Memorandum of Farmworkers Agrarian Reform Movement, Inc. (FARM).

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That the lots comprising the Hacienda Luisita shall be subdivided by the applicant-corporation and sold at cost to the tenants, should there be any, and whenever conditions should exist warranting such action under the provisions of the Land Tenure Act;[21]

As of March 31, 1958, Tadeco had fully paid the purchase price for the acquisition of Hacienda Luisita and Tabacalera's interest in CAT.[22]

The details of the events that happened next involving the *hacienda* and the political color some of the parties embossed are of minimal significance to this narration and need no belaboring. Suffice it to state that on May 7, 1980, the martial law administration filed a suit before the Manila Regional Trial Court (RTC) against Tadeco, *et al.*, for them to surrender Hacienda Luisita to the then Ministry of Agrarian Reform (MAR, now the Department of Agrarian Reform [DAR]) so that the land can be distributed to farmers at cost. Responding, Tadeco or its owners alleged that Hacienda Luisita does not have tenants, besides which sugar lands—of which the *hacienda* consisted—are not covered by existing agrarian reform legislations. As perceived then, the government commenced the case against Tadeco as a political message to the family of the late Benigno Aquino, Jr.[23]

Eventually, the Manila RTC rendered judgment ordering Tadeco to surrender Hacienda Luisita to the MAR. Therefrom, Tadeco appealed to the Court of Appeals (CA).

On March 17, 1988, the Office of the Solicitor General (OSG) moved to withdraw the government's case against Tadeco, *et al*. By Resolution of May 18, 1988, the CA dismissed the case the Marcos government initially instituted and won against Tadeco, *et al*. The dismissal action was, however, made subject to the obtention by Tadeco of the PARC's approval of a stock distribution plan (SDP) that must initially be implemented after

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[21] *Id.* at 3645-3646, Memorandum of HLI.

[22] *Id.* at 3645.

[23] *Id.* at 3810, Memorandum of FARM.

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such approval shall have been secured.[24] The appellate court wrote:

> The defendants-appellants x x x filed a motion on April 13, 1988 joining the x x x governmental agencies concerned in moving for the dismissal of the case subject, however, to the following conditions embodied in the letter dated April 8, 1988 (Annex 2) of the Secretary of the [DAR] quoted, as follows:
>
> 1. Should TADECO fail to obtain approval of the stock distribution plan for failure to comply with all the requirements for corporate landowners set forth in the guidelines issued by the [PARC]: or
>
> 2. If such stock distribution plan is approved by PARC, but TADECO fails to initially implement it.
>
> x x x x x x x x x
>
> WHEREFORE, the present case on appeal is hereby dismissed without prejudice, and should be revived if any of the conditions as above set forth is not duly complied with by the TADECO.[25]

Markedly, Section 10 of EO 229[26] allows corporate landowners, as an alternative to the actual land transfer scheme of CARP, to give qualified beneficiaries the right to purchase shares of stocks of the corporation under a stock ownership arrangement and/or land-to-share ratio.

Like EO 229, RA 6657, under the latter's Sec. 31, also provides two (2) alternative modalities, *i.e.*, land or stock transfer, pursuant to either of which the corporate landowner can comply with CARP, but subject to well-defined conditions and timeline requirements. Sec. 31 of RA 6657 provides:

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[24] *Id.* at 3811.

[25] *Id.* at 3651, Memorandum of HLI.

[26] SECTION 10. Corporate Landowners. Corporate landowners may give their workers and other qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the land assets bear in relation to the corporation's total assets, and grant additional compensation which may be used for this purposes. The approval by the PARC of a plan for such stock distribution, and its initial implementation, shall be deemed compliance with the land distribution requirements of the CARP.

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SEC. 31. *Corporate Landowners.* — Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries x x x.

Upon certification by the DAR, corporations owning agricultural lands **may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. x x x

Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: Provided, That the following conditions are complied with:

(a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits, the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

(b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;

(c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and

(d) Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

If within two (2) years from the approval of this Act, the [voluntary] land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act. (Emphasis added.)

Vis-à-vis the stock distribution aspect of the aforequoted Sec. 31, DAR issued Administrative Order No. 10, Series of 1988

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(DAO 10),[27] entitled *Guidelines and Procedures for Corporate Landowners Desiring to Avail Themselves of the Stock Distribution Plan under Section 31 of RA 6657.*

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[27] **Section 1.**

1a.) ***Qualified Corporate Landowner-Applicant*** — All *bona fide* stock corporations owning agricultural land utilized for agricultural production and existing as such as of June 15, 1988, the date of effectivity of R.A. No. 6657, may apply for and avail of the voluntary stock distribution plan [SDP] provided in Section 31 thereof. New corporations incorporated after the effectivity of R.A. No. 6657 may also apply, provided that they are subsidiaries of or spin-offs from their mother corporation x x x.

1b.) ***Qualified Beneficiaries*** — The qualified beneficiaries in the [SDP] are all those identified beneficiaries of land transfer enumerated under Section 22 of RA 6657.

The [SDP] shall be agreed upon by both the corporate landowner-applicant and the qualified beneficiaries and subject to approval by PARC. x x x

Section 2. ***Applicant and Time of Filing—*** The corporate landowner-applicant shall file the [SDP] in a form to be prescribed by DAR and obtain approval within two (2) years from the effectivity of RA 6657 but prior to DAR's notice of compulsory acquisition of said property under the same law.

Section 3. ***Proportion of Distribution*** — The [SDP] of corporate landowner-applicant must give the qualified beneficiaries the right to purchase at least such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the corporation's total assets under such terms and conditions as may be agreed upon by them.

Section 4. ***Stock Distribution Plan*** — The [SDP] submitted by the corporate landowner-applicant shall provide for the distribution of an equal number of shares of stock of the same class and value, with the same rights and features as all other shares, to each of the qualified beneficiaries. This distribution plan in all cases, shall be at least the minimum ratio for purposes of compliance with Section 31 of RA 6657.

On top of the minimum ratio provided under Section 3 of this Implementing Guideline, corporate landowner-applicant may adopt additional stock distribution schemes taking into account factors such as rank, seniority, salary, position and other circumstances which may be deemed desirable as a matter of sound company policy.

Section 5. ***Criteria for Evaluation of Proposal*** — The [SDP] submitted by the corporate landowner-applicant shall meet the following minimum criteria:

a. that the continued operation of the corporation with its agricultural land intact and unfragmented is viable with potential for growth and increased profitability;

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b. that the plan for stock distribution to qualified beneficiaries would result in increased income and greater benefits to them, than if the lands were divided and distributed to them individually;

c. that the stock distribution plan is acceptable to a majority, defined as 50% plus 1, of all the qualified beneficiaries;

d. that the plan shall include a provision that the books of the corporation shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

e. that irrespective of the value of the beneficiaries equity in the corporation, they shall be assured of at least one (1) representative in the Board of Directors or in a management or executive committee, if one exists x x x;

f. that a beneficiary who avails of a stock option must first execute the necessary waiver from being a beneficiary in another stock distribution plan x x x;

g. other criteria that the DAR may prescribe x x x.

Section 6. ***Valuation and Compensation*** — The valuation of corporate assets submitted by the corporate landowner-applicant in this proposal shall be subject to verification and audit examination by DAR. The determination of the value of the agricultural land shall be based on the land valuation guidelines promulgated by DAR.

Section 7. ***Modes of Stock Distribution*** **—** The [SDP] x x x may be effected through divestment of the existing equity holdings by stockholders or other modes of stock distribution acceptable to both parties and duly approved by DAR.

Section 8. Limited Transferability of Beneficiaries Stocks x x x.

Section 9. Payment of Shares — The payment of the purchase price of the shares shall be under such terms and conditions agreed upon by the corporate landowner-applicant and the beneficiaries, provided that in no case shall the compensation received by the workers, at the time the shares of stock are distributed, be reduced.

Section 10. ***Disposition of Proposal*** —After the evaluation of the [SDP] submitted by the corporate landowner-applicant to the [DAR] Secretary, he shall forward the same with all the supporting documents to the Presidential Agrarian Reform Council (PARC), through its Executive Committee, with his recommendation for final action.

Section 11. ***Implementation/Monitoring of Plan*** — The approved [SDP] shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the [SDP].

From the start, the stock distribution scheme appeared to be Tadeco's preferred option, for, on August 23, 1988,[28] it organized a spin-off corporation, HLI, as vehicle to facilitate stock acquisition by the farmworkers. For this purpose, Tadeco assigned and conveyed to HLI the agricultural land portion (4,915.75 hectares) and other farm-related properties of Hacienda Luisita in exchange for HLI shares of stock.[29]

Pedro Cojuangco, Josephine C. Reyes, Teresita C. Lopa, Jose Cojuangco, Jr., and Paz C. Teopaco were the incorporators of HLI.[30]

To accommodate the assets transfer from Tadeco to HLI, the latter, with the Securities and Exchange Commission's (SEC's) approval, increased its capital stock on May 10, 1989 from PhP 1,500,000 divided into 1,500,000 shares with a par value of PhP 1/share to PhP 400,000,000 divided into 400,000,000 shares also with par value of PhP 1/share, 150,000,000 of which were to be issued only to qualified and registered beneficiaries of the CARP, and the remaining 250,000,000 to any stockholder of the corporation.[31]

Upon completion, the corporate landowner-applicant shall be issued a Certificate of Compliance. The [DAR] Secretary x x x shall strictly monitor the implementation to determine whether or not there has been compliance with the approved [SDP] as well as the requirements of the CARP. For this purpose, the corporate landowner-applicant shall make available its premises for ocular inspection, its personnel for interview, and its records for examination at normal business hours.

Section 12. Non-compliance with any of the requirements of Section 31 of RA 6675, as implemented by this Implementing Guidelines shall be grounds for the revocation of the Certificate of Compliance issued to the corporate landowner-applicant.

Section 13. Nothing herein shall be construed as precluding the PARC from making its own independent evaluation and assessment of the stock distribution plan x x x and in prescribing other requirements.

[28] *Rollo*, p. 386.

[29] *Id.* at 148.

[30] *Id.* at 3767.

[31] *Id.* at 1318-1319.

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As appearing in its proposed SDP, the properties and assets of Tadeco contributed to the capital stock of HLI, as appraised and approved by the SEC, have an aggregate value of PhP 590,554,220, or after deducting the total liabilities of the farm amounting to PhP 235,422,758, a net value of PhP 355,531,462. This translated to 355,531,462 shares with a par value of PhP 1/share.[32]

On May 9, 1989, some 93% of the then farmworker-beneficiaries (FWBs) complement of Hacienda Luisita signified in a referendum their acceptance of the proposed HLI's Stock Distribution Option Plan. On May 11, 1989, the Stock Distribution Option Agreement (SDOA), styled as a Memorandum of Agreement (MOA),[33] was entered into by Tadeco, HLI, and the 5,848 qualified FWBs[34] and attested to by then DAR Secretary Philip Juico. The SDOA embodied the basis and mechanics of the SDP, which would eventually be submitted to the PARC for approval. In the SDOA, the parties agreed to the following:

1. The percentage of the value of the agricultural land of Hacienda Luisita (₱196,630,000.00) in relation to the total assets (₱590,554,220.00) transferred and conveyed to the SECOND PARTY [HLI] is 33.296% that, under the law, is the proportion of the outstanding capital stock of the SECOND PARTY, which is ₱355,531,462.00 or 355,531,462 shares with a par value of ₱1.00 per share, that has to be distributed to the THIRD PARTY [FWBs] under the stock distribution plan, the said 33.296% thereof being ₱118,391,976.85 or **118,391,976.85 shares**.

2. The qualified beneficiaries of the stock distribution plan shall be the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by the SECOND PARTY.

3. At the end of each fiscal year, for a **period of 30 years**, the SECOND PARTY shall arrange with the FIRST PARTY [Tadeco]

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[32] *Id.* at 3736-3740.

[33] *Id.* at 147-150.

[34] *Id.* at 3746. The figure is lifted from "A Proposal for Stock Distribution under CARP"; Memorandum of HLI, Annex "A".

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the **acquisition and distribution** to the THIRD PARTY on the basis of number of days worked and at no cost to them of one-thirtieth (1/30) of 118,391,976.85 shares of the capital stock of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,976.85 shares shall have been completely acquired and distributed to the THIRD PARTY.

4. The SECOND PARTY shall guarantee to the qualified beneficiaries of the [SDP] that every year they will receive on top of their regular compensation, an amount that approximates the equivalent of three (3%) of the total gross sales from the production of the agricultural land, whether it be in the form of cash dividends or incentive bonuses or both.

5. Even if only a part or fraction of the shares earmarked for distribution will have been acquired from the FIRST PARTY and distributed to the THIRD PARTY, FIRST PARTY shall execute at the beginning of each fiscal year an irrevocable proxy, valid and effective for one (1) year, in favor of the farmworkers appearing as shareholders of the SECOND PARTY at the start of said year which will empower the THIRD PARTY or their representative to vote in stockholders' and board of directors' meetings of the SECOND PARTY convened during the year the entire 33.296% of the outstanding capital stock of the SECOND PARTY earmarked for distribution and thus be able to gain such number of seats in the board of directors of the SECOND PARTY that the whole 33.296% of the shares subject to distribution will be entitled to.

6. In addition, the SECOND PARTY shall within a reasonable time subdivide and allocate for free and without charge among the qualified family-beneficiaries residing in the place where the agricultural land is situated, residential or homelots of not more than 240 sq.m. each, with each family-beneficiary being assured of receiving and owning a homelot in the *barangay* where it actually resides on the date of the execution of this Agreement.

7. This Agreement is entered into by the parties in the spirit of the (C.A.R.P.) of the government and with the supervision of the [DAR], with the end in view of improving the lot of the qualified beneficiaries of the [SDP] and obtaining for them greater benefits. (Emphasis added.)

As may be gleaned from the SDOA, included as part of the distribution plan are: (a) production-sharing equivalent to three

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percent (3%) of gross sales from the production of the agricultural land payable to the FWBs in cash dividends or incentive bonus; and (b) distribution of free homelots of not more than 240 square meters each to family-beneficiaries. The production-sharing, as the SDP indicated, is payable "**irrespective of whether [HLI] makes money or not**," implying that the benefits do not partake the nature of dividends, as the term is ordinarily understood under corporation law.

While a little bit hard to follow, given that, during the period material, the assigned value of the agricultural land in the hacienda was PhP 196.63 million, while the total assets of HLI was PhP 590.55 million with net assets of PhP 355.53 million, Tadeco/ HLI would admit that the ratio of the land-to-shares of stock corresponds to **33.3%** of the outstanding capital stock of the HLI equivalent to **118,391,976.85 shares** of stock with a par value of PhP 1/share.

Subsequently, HLI submitted to DAR its SDP, designated as "Proposal for Stock Distribution under C.A.R.P.,"[35] which was substantially based on the SDOA.

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[35] *Id.* at 3730-3748.

A PROPOSAL FOR STOCK DISTRIBUTION UNDER C.A.R.P.

Tarlac Development Corporation, [Tadeco] engaged principally in agricultural pursuits, proposes to comply with the Comprehensive Agrarian Reform Program (C.A.R.P.) x x x with [regard] to its farm x x x "Hacienda Luisita" by availing of Section 31 of [RA] 6657 which allows a corporate landowner to choose between physically dividing its agricultural land subject to agrarian reform among its farmworkers and adopting a plan of distribution to the same beneficiaries of the shares of the capital stock of the corporation owning the agricultural land.

In view of the fact that the portions of Hacienda Luisita devoted to agriculture, consisting of approximately 4,915.75 hectares, if divided and distributed among more or less 7,000 farmworkers as potential beneficiaries, would not be adequate to give the said farmhands a decent means of livelihood, [Tadeco] has decided to resort to the distribution of shares to the qualified beneficiaries as the better and more equitable mode of compliance with the C.A.R.P.

One of the important businesses of [Tadeco] was to operate Hacienda Luisita which is a sugarcane farm, the agricultural parts of which x x x have an aggregate area of about 4,915.75 hectares.

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Prior to 1981, [Tadeco] operated the said farm x x x manually. The only mechanized portion of the operation then was the preparation of the land. Under this system of cultivation, production was so exiguous that the yield per hectare was even below the break-even point. To survive the crippling economic crisis begotten by the depressed price of sugar [Tadeco] began introducing in Hacienda Luisita in 1981 new technology in sugarcane farming by way of mechanization. The size and contiguous nature of the land made the mechanized approach ideal. Its intention was not to cut cost thru labor displacement but to take advantage of the better productivity level accruing to this type of operation.

In no time at all, x x x the yield per hectare almost doubled and went up to 80 tons. And what was before a marginal operation became a viable one.

FARMWORKER-BENEFICIARIES

Hacienda Luisita, as an agricultural enterprise, employs at the moment 6,296 farmworkers, excluding those whose names have been dropped from the list for not having worked in the farm for the past two years. Its labor complement consists of 337 permanent farmworkers, 275 seasonal, 3,807 casuals who are master list members and 1,877 casuals who are non-master list members, although it actually needs only 4,047 of them to run the farm.

Since its acquisition of Hacienda Luisita in 1958, [Tadeco] has never resorted to retrenchment in personnel even during extremely difficult times x x x, which saw the sugar industry on the brink of collapse. It has promptly complied with increases in the minimum wage law. There has been no collective bargaining negotiation that did not produce an across-the-board increase in wages for labor, so that a Hacienda Luisita worker received compensation much higher than the floor wage prescribed for the sugar industry.

For Crop Year 1987-88, [Tadeco] paid a total of ₱48,040,000.00 in terms of salaries and wages and fringe benefits of its employees and farmworkers in Hacienda Luisita. Among the fringe benefits presently enjoyed by its personnel, under their existing collective bargaining agreement [CBA] with management, are the following:

1.) 100% free hospitalization and medical plan for all employees and workers, and their spouses, children and parents;

2.) Service and amelioration bonuses;

3.) Interest-free loans on education, rice and sugar, and salary and special loans;

4.) Bus fare subsidy for students who are children of employees and workers in the farm, and

5.) Retirement plan that is fully funded and non-contributory.

To be entitled to the above-mentioned benefits, a qualified worker has only to work for 37 days in one crop year.

SPIN-OFF CORPORATION

To expedite compliance with the requirements of the [CARP] on stock distribution and at the same time assure the farmworker-beneficiaries of the

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farm of receiving greater benefits than if the agricultural land were to be divided among them instead, [Tadeco] conceived of separating the agricultural portions of Hacienda Luisita from the rest of its business and transferring and conveying the said agricultural land and such properties, assets, equipment, rights, interests and accounts related to its operation, including liabilities, obligations and encumbrances incurred thereby, to another corporation separate and distinct, and for that purpose caused, thru its controlling stockholders, the registration and incorporation of [HLI] on August 23, 1988, as the entity to serve as the spin-off vehicle in whose favor the said properties and assets were later on to be transferred and conveyed.

Capital Structure. — To accommodate such transfer of assets, [HLI], with the approval of the [SEC], increased its authorized capital stock on May 10, 1989, from ₱1,500,000.00, divided into 1,500,000 shares with a par value of ₱1.00 per share, to ₱400,000,000.00, divided into ₱400,000,000 shares also with a par value of ₱1.00 per share, ₱150,000,000 of which issuable only to qualified and registered beneficiaries of the (C.A.R.P.) and ₱250,000,000, to any stockholder or stockholders of the corporation.

Valuation of Assets Transferred. — By virtue of a Deed of Assignment and Conveyance executed on March 22, 1989, [Tadeco] subscribed to ₱355,131,462.00 worth of shares in the increase in authorized capital stock of the spin-off corporation, [HLI], and in payment of its subscription transferred and conveyed to the latter the agricultural portions of Hacienda Luisita x x x having a total area of 4,915.7466 hectares, which are covered x x x together with such other properties, assets, equipment, rights, interests and accounts as are necessary in the operation of the agricultural land.

Such properties and assets contributed by [Tadeco] to the capital stock of [HLI], as appraised and approved by the [SEC], have an aggregate value of ₱590,554,220.00, but inasmuch as the conveyance of assets also involved the transfer of liabilities to the spin-off corporation, the net value left, after deducting the total liabilities of the farm amounting to ₱235,422,758.99, is ₱355,131,462.00 which is precisely the amount of [Tadeco's] subscription to the increase in capital stock of [HLI].

The total value of the properties and assets transferred and conveyed by [Tadeco] to [HLI] amounting to ₱590,554,220.00 may be broken down as follows:

1.)	Agricultural land, x x x totaling 4,915.7466 hectares at their fair market value of ₱40,000.00 per hectare …….....	₱196,630,000.00
2.)	Machinery and Equipment, x x x consisting of heavy equipment, [*etc*.]	43,932,600.00
3.)	Current Assets x x x …….....	162,638,993.00
4.)	Land Improvements, in the nature of roads, culverts, bridges, [*etc*.]	31,886,300.00

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5.)	Unappraised Assets, such as railroad system and equipment, x x x and construction in progress…….……	8,805,910.00
6.)	Long Term Note Receivable	28,063,417.00
7.)	Residential Land, with a total area of 120.9234 hectares at their appraisal value of ₱50.00 per sq. m. …….....…	60,462,000.00
8.)	Land, consisting of 187 lots used for roads, railway, canals, lagoons, x x x having an aggregate area of 265.7495 hectares ……..	58,135,000.00

The break down of the liabilities and obligations contracted in operating the farm land of Hacienda Luisita [totaling ₱235,422,758.00] and that have to be deducted from the total value of the properties and assets transferred to arrive at their net value, is hereinbelow indicated:

x x x x x x x x x

The above valuations of both assets and liabilities have been given the imprimatur of the [SEC] by reason of its approval of the increase in the authorized capital stock of [HLI], the subscription to such increase of [Tadeco], and the payment by [Tadeco] of its subscription thru transfer of assets and liabilities. Consequently, the net value of the assets and properties transferred to [HLI] of ₱355,131,462.00, if added to the subscription of the incorporators [HLI] to the original authorized capital stock of the said corporation amounting to ₱400,000.00, would give us the total capital stock subscribed and outstanding of [HLI] of ₱355,531,462.00 which, as will be seen later on, plays an important role in determining what amount of shares of the capital stock of [HLI] may be distributed among its farmworker-beneficiaries pursuant to Section 31 of Republic Act No. 6657.

MECHANICS OF STOCK DISTRIBUTION PLAN

Under Section 31 of [RA] 6657, a corporation owning agricultural land may distribute among the qualified beneficiaries such proportion or percentage of its capital stock that the value of the agricultural land actually devoted to agricultural activities, bears in relation to the corporation's total assets. Conformably with this legal provision, [Tadeco] hereby submits for approval a stock distribution plan that envisions the following:

1.) The percentage of the value of the agricultural portions of Hacienda Luisita (₱196,630,000.00) in relation to the total assets (₱590,554,220.00) transferred and conveyed to the spin-off corporation, x x x is 33.3%, or to be exact, 33.296%, that in accordance with law, is the proportion of the outstanding capital stock of the corporation owning the agricultural land, which is ₱355,531,462.00 or ₱355,531,462 shares with a par value of ₱1.00 per share, that is proposed to be distributed to the qualified beneficiaries of the plan.

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2.) The said 33.3% of the outstanding capital stock of [HLI] is ₱118,391,976.85 or 118,391,976.85 shares with a par value of ₱1.00 per share.

3.) The qualified beneficiaries of the [SDP] shall be the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by [HLI] x x x.

4.) [HLI] shall arrange with [Tadeco] at the end of each fiscal year, for a period of 30 years, the acquisition and distribution to the farmworker-beneficiaries, on the basis of number of days worked during the year and at no cost to them, of one-thirtieth (1/30) of 118,391,976.85 shares of the capital stock of [HLI], equivalent to ₱118,391,976.85, that are presently owned and held by [Tadeco], until such time as the entire block of ₱118,391,976.85 shares shall have been completely acquired and distributed among the farmworker-beneficiaries.

5.) [HLI] guarantees to the qualified beneficiaries of the stock distribution plan that every year they will receive, on top of their regular compensation, an amount that approximates three (3%) percent of the total gross sales from the production of the agricultural land, whether it be in the form of cash dividends or incentive bonuses or both.

6.) Even if only a part or fraction of the shares earmarked for distribution will have been acquired from [Tadeco] and distributed among the farmworker-beneficiaries, [Tadeco] shall execute at the beginning of each fiscal year an irrevocable proxy, valid and effective for one (1) year, in favor of the farmworkers appearing as shareholders of [HLI] at the start of the said year which will empower the said farmworkers or their representative to vote in stockholders' meetings of [HLI] convened during the year the entire 33.3% of the outstanding capital stock of [HLI] earmarked for distribution and thus be able from the very beginning to gain such number of seats in the board of directors of [HLI] that the whole 33.3% of the shares subject to distribution will be entitled to.

7.) In addition, [HLI] shall within a reasonable time subdivide and allocate for free and without charge among the qualified family-beneficiaries residing in the place where the agricultural land is situated, residential or homelots of not more than 240 sq. m. each, with each family-beneficiary being assured of receiving and owning a homelot in the barrio or *barangay* where it actually resides.

STOCK RIGHTS AND RESTRICTIONS

As previously explained, the amendment of the articles of incorporation of [HLI] increasing its capital stock provided for the classification of its shares of stock into two types: Class "A" and Class "B" shares. Shares of stock representing the proportion of the outstanding capital stock of the said corporation to be distributed among its farmworker-beneficiaries shall constitute the Class "A" shares, while the rest of the capital stock shall become Class "B" shares or shares sans any restrictions and can be issued to any stockholder.

Class "A" shares have the same rights as the x x x Class "B" shares. But their issuance being limited to farmworker-beneficiaries only, Class "A" shares

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are subject to the restriction that for a period of 10 years from and after their distribution, no sale, transfer or conveyance of such shares x x x shall be valid unless it be by hereditary succession or in favor of qualified and registered beneficiaries within the same corporation. This limitation on the transferability appears x x x in the amended articles of incorporation of [HLI] and in due time will be printed on the corresponding certificates of stock of that type of shares.

Limiting the effectivity of the restriction to 10 years finds support in Section 27 of the Republic Act No. 6657 which makes land distributed among beneficiaries under the [CARP] non-transferable for only 10 years, and since stock distribution is a lawful alternative to the fragmentation of land, the said legal provision should equally apply to a case where stock option is the choice.

ADVANTAGES OF STOCK PLAN
OVER LAND DISTRIBUTION

There are puissant reasons behind [Tadeco's] preference for stock distribution to land apportionment, and they are the following:

1.) The physical fragmentation and distribution of the agricultural segments of Hacienda Luisita, among potential farmworker-beneficiaries who number approximately 7,000 would result in each individual farmhand receiving less than a hectare of land that in no way could produce enough to enable him to lead a comfortable life;

2.) As the recipient of a parcel of agricultural land, the farmworker has to take care of injecting the necessary inputs needed by the land and shoulder the cost of production, and

3.) The farmworker incurs the obligation of paying to the government for his share of the agricultural land, although the law allows him 30 years within which to do it.

On the other hand, the stock distribution plan envisaged by [Tadeco] contemplates of:

A. Distributing the shares of stock over a number of years among the qualified beneficiaries at no cost to them;

B. Allowing the farmworker to continue to work on the land as such and receive the wages and other benefits provided for by his [CBA] with the corporate landowner;

C. Entitling him to receive dividends, whether in cash or in stock, on the shares already distributed to him and benefit from whatever appreciation in value that the said shares may gain as the corporation becomes profitable;

D. Qualifying him to become the recipient of whatever income-augmenting and benefit-improving schemes that the spin-off corporation may establish, such as the payment of the guaranteed three (3%) percent

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of gross sales every year and the free residential or homelots to be allotted to family beneficiaries of the plan, and

E. Keeping the agricultural land intact and unfragmented, to maintain the viability of the sugar operation involving the farm as a single unit and thus warrant to the acknowledged farmworker-beneficiaries, hand-in-hand with their acquisition of the shares of the capital stock of the corporation owning the land, a continuing and stable source of income.

Indeed, the stock distribution plan of [Tadeco] x x x has many strong points and adherence to the law is one of them.

For instance, in arranging for the acquisition by the farmworker-beneficiaries of shares of the capital stock of the corporation owning the land gratis, the corporate landowner upholds Section 9 of the Guidelines and Procedures promulgated to implement Section 31 of [RA] 6657, which prohibits the use of government funds in paying for the shares. Moreover, the plan for the free dispersal of shares will not in any way diminish the regular compensation being received by the farmworker-beneficiaries at the time of share distribution, which is proscribed by Section 31 of [RA] 6657.

IMPORTANCE TO
ECONOMIC DEVELOPMENT

Hacienda Luisita at present is the principal source of sugarcane needed by a sugar mill owned and operated by [CAT] in the area. It supplies 50% of the sugarcane requirement of the mill that has 1,850 employees and workers in its employ. Any disruption in the present operation of Hacienda Luisita which would affect its present productivity level would therefore automatically influence the operational viability of the sugar factory x x x and which, in turn, would have repercussions on the livelihood of the present employees and workers of the mill as well as the livelihood of the thousands of sugarcane planters and their families within the Tarlac sugar district being serviced by the sugar mill.

On the other hand, the well-being of the sugar mill has to be the prime concern also of the corporate owner of Hacienda Luisita, simply because it is the entity that mills and converts the sugarcane produce of the latter to a finished product. Not only that. By milling with [CAT] which has the most efficient sugar mill in the region, the corporate owner of Hacienda Luisita in effect guarantees to itself maximum recovery from its farm's sugarcane — something that is essential to its financial capability. In other words, the relationship between farm and mill is one of absolute reciprocity and interdependence. One cannot exist without the other.

The importance of the agricultural land of Hacienda Luisita staying undivided cannot be gainsaid. For it to remain lucrative, it has to be operated as a unit x x x. And on its successful operation rests the well-being of so many businesses and undertakings in the province, or in a wider perspective, in the region, that are largely dependent upon it for existence.

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Notably, in a follow-up referendum the DAR conducted on October 14, 1989, 5,117 FWBs, out of 5,315 who participated, opted to receive shares in HLI.[36] One hundred thirty-two (132) chose actual land distribution.[37]

After a review of the SDP, then DAR Secretary Miriam Defensor-Santiago (Sec. Defensor-Santiago) addressed a letter

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CONFORMITY OF
FARMWORKER-BENEFICIARIES

On May 11, 1989, a historic event took place in Hacienda Luisita when the representatives of [Tadeco] and [HLI] and 5,848 farmworker-beneficiaries inked their accord, in the presence of officials of the [DAR], to a [MOA] that embodies the stock distribution plan subject of this proposal. The said 5,848 farmworker-beneficiaries who gave their conformity to the agreement represent 92.9% of their entire complement which is much more than the majority (50% plus one) that the law requires.

CONCLUSION

Here is a stock distribution plan that calls for the acquisition and distribution every year, for the next 30 years, of 3,946,399.23 shares, worth ₱3,946,399.23, of the capital stock of the corporation owning the agricultural land among its qualified farmworker-beneficiaries at no cost to them. It also guarantees to pay to them each year the equivalent of three (3%) percent of the gross sales of the production of the land, which is about ₱7,320,000.00 yearly, irrespective of whether the said corporation makes money or not. It contemplates of allowing the farmworker-beneficiaries from the very start to occupy such number of seats in the board of directors of the corporate landowner as the whole number of shares of stock set aside for distribution may entitle them, so that they could have a say in forging their own destiny. And last but not least, it intends to help give the same farmworker-beneficiaries, who are qualified, adequate shelter by providing residential or homelots not exceeding 240 sq.m. each for free which they can call their own.

The above stock distribution plan is hereby submitted on the basis of all these benefits that the farmworker-beneficiaries of Hacienda Luisita will receive under its provisions in addition to their regular compensation as farmhands in the agricultural enterprise and the fringe benefits granted to them by their [CBA] with management. x x x

[36] Under DAO 10, Sec. 1b.), par. 2, "the acceptance of the [SDP] by the majority of all the qualified beneficiaries shall be binding upon all the said qualified beneficiaries within the applicant corporation."

[37] *Rollo*, p. 14.

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dated November 6, 1989[38] to Pedro S. Cojuangco (Cojuangco), then Tadeco president, proposing that the SDP be revised, along the following lines:

1. That over the implementation period of the [SDP], [Tadeco]/HLI shall ensure that there will be no dilution in the shares of stocks of individual [FWBs];
2. That a safeguard shall be provided by [Tadeco]/HLI against the dilution of the percentage shareholdings of the [FWBs], *i.e.*, that the 33% shareholdings of the [FWBs] will be maintained at any given time;
3. That the mechanics for distributing the stocks be explicitly stated in the [MOA] signed between the [Tadeco], HLI and its [FWBs] prior to the implementation of the stock plan;
4. That the stock distribution plan provide for clear and definite terms for determining the actual number of seats to be allocated for the [FWBs] in the HLI Board;
5. That HLI provide guidelines and a timetable for the distribution of homelots to qualified [FWBs]; and
6. That the 3% cash dividends mentioned in the [SDP] be expressly provided for [in] the MOA.

In a letter-reply of November 14, 1989 to Sec. Defensor-Santiago, Tadeco/HLI explained that the proposed revisions of the SDP are already embodied in both the SDP and MOA.[39] Following that exchange, the PARC, under then Sec. Defensor-Santiago, by **Resolution No. 89-12-2**[40] dated November 21, 1989, approved the SDP of Tadeco/HLI.[41]

At the time of the SDP approval, HLI had a pool of farmworkers, numbering 6,296, more or less, composed of permanent, seasonal and casual master list/payroll and non-master list members.

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[38] *Id.* at 1308-1309.

[39] *Id.* at 1310-1313.

[40] Entitled "Resolution Approving the Stock Distribution Plan of [Tadeco]/HLI."

[41] *Rollo*, p. 151.

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From 1989 to 2005, HLI claimed to have extended the following benefits to the FWBs:

(a) 3 billion pesos (₱3,000,000,000) worth of salaries, wages and fringe benefits

(b) 59 million shares of stock distributed for free to the FWBs;

(c) 150 million pesos (₱150,000,000) representing 3% of the gross produce;

(d) 37.5 million pesos (₱37,500,000) representing 3% from the sale of 500 hectares of converted agricultural land of Hacienda Luisita;

(e) 240-square meter homelots distributed for free;

(f) 2.4 million pesos (₱2,400,000) representing 3% from the sale of 80 hectares at 80 million pesos (₱80,000,000) for the SCTEX;

(g) Social service benefits, such as but not limited to free hospitalization/medical/maternity services, old age/death benefits and no interest bearing salary/educational loans and rice sugar accounts.[42]

Two separate groups subsequently contested this claim of HLI.

On August 15, 1995, HLI applied for the conversion of 500 hectares of land of the *hacienda* from agricultural to industrial use,[43] pursuant to Sec. 65 of RA 6657, providing:

SEC. 65. *Conversion of Lands*. — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification, or conversion of the land and its disposition: Provided, That the beneficiary shall have fully paid its obligation.

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[42] *Id.* at 3667-3668.

[43] *Id.* at 647-650.

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The application, according to HLI, had the backing of 5,000 or so FWBs, including respondent Rene Galang, and Jose Julio Suniga, as evidenced by the Manifesto of Support they signed and which was submitted to the DAR.[44] After the usual processing, the DAR, thru then Sec. Ernesto Garilao, approved the application on August 14, 1996, per DAR Conversion Order No. 030601074-764-(95), Series of 1996,[45] subject to payment of three percent (3%) of the gross selling price to the FWBs and to HLI's continued compliance with its undertakings under the SDP, among other conditions.

On December 13, 1996, HLI, in exchange for subscription of 12,000,000 shares of stocks of Centennary Holdings, Inc. (Centennary), ceded 300 hectares of the converted area to the latter.[46] Consequently, HLI's Transfer Certificate of Title (TCT) No. 287910[47] was canceled and TCT No. 292091[48] was issued in the name of Centennary. HLI transferred the remaining 200 hectares covered by TCT No. 287909 to Luisita Realty Corporation (LRC)[49] in two separate transactions in 1997 and 1998, both uniformly involving 100 hectares for PhP 250 million each.[50]

Centennary, a corporation with an authorized capital stock of PhP 12,100,000 divided into 12,100,000 shares and wholly-owned by HLI, had the following incorporators: Pedro Cojuangco, Josephine C. Reyes, Teresita C. Lopa, Ernesto G. Teopaco, and Bernardo R. Lahoz.

Subsequently, Centennary sold[51] the entire 300 hectares to Luisita Industrial Park Corporation (LIPCO) for PhP 750 million.

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[44] *Id.* at 80, Petition of HLI; *id.* at 944, Consolidated Reply of HLI; *id.* at 1327-1328.

[45] *Id.* at 651-664.

[46] *Id.* at 1485-1487.

[47] *Id.* at 1483-1484.

[48] *Id.* at 1492-1493.

[49] *Id.* at 1362.

[50] *Id.* at 3669.

[51] *Id.* at 1499-1509, via a Deed of Sale dated July 30, 1998.

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The latter acquired it for the purpose of developing an industrial complex.[52] As a result, Centennary's TCT No. 292091 was canceled to be replaced by TCT No. 310986[53] in the name of LIPCO.

From the area covered by TCT No. 310986 was carved out two (2) parcels, for which two (2) separate titles were issued in the name of LIPCO, specifically: (a) TCT No. 365800[54] and (b) TCT No. 365801,[55] covering 180 and four hectares, respectively. TCT No. 310986 was, accordingly, partially canceled.

Later on, in a Deed of Absolute Assignment dated November 25, 2004, LIPCO transferred the parcels covered by its TCT Nos. 365800 and 365801 to the Rizal Commercial Banking Corporation (RCBC) by way of *dacion en pago* in payment of LIPCO's PhP 431,695,732.10 loan obligations. LIPCO's titles were canceled and new ones, TCT Nos. 391051 and 391052, were issued to RCBC.

Apart from the 500 hectares alluded to, another 80.51 hectares were later detached from the area coverage of Hacienda Luisita which had been acquired by the government as part of the Subic-Clark-Tarlac Expressway (SCTEX) complex. In absolute terms, 4,335.24 hectares remained of the original 4,915 hectares Tadeco ceded to HLI.[56]

Such, in short, was the state of things when two separate petitions, both undated, reached the DAR in the latter part of 2003. In the first, denominated as Petition/Protest,[57] respondents Jose Julio Suniga and Windsor Andaya, identifying themselves as head of the Supervisory Group of HLI (Supervisory Group),

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[52] *Id.* at 1362.

[53] *Id.* at 1514-1518.

[54] *Id.* at 1519-1520.

[55] *Id.* at 1521-1522.

[56] TSN, August 18, 2010, pp. 153-155.

[57] *Rollo*, pp. 153-158, signed by 62 individuals.

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and 60 other supervisors sought to revoke the SDOA, alleging that HLI had failed to give them their dividends and the one percent (1%) share in gross sales, as well as the thirty-three percent (33%) share in the proceeds of the sale of the converted 500 hectares of land. They further claimed that their lives have not improved contrary to the promise and rationale for the adoption of the SDOA. They also cited violations by HLI of the SDOA's terms.[58] They prayed for a renegotiation of the SDOA, or, in the alternative, its revocation.

Revocation and nullification of the SDOA and the distribution of the lands in the *hacienda* were the call in the second petition, styled as *Petisyon* (Petition).[59] The *Petisyon* was ostensibly filed on December 4, 2003 by *Alyansa ng mga Manggagawang Bukid ng Hacienda Luisita* (AMBALA), where the handwritten name of respondents Rene Galang as "Pangulo AMBALA" and Noel Mallari as "Sec-Gen. AMBALA"[60] appeared. As alleged, the petition was filed on behalf of AMBALA's members purportedly composing about 80% of the 5,339 FWBs of Hacienda Luisita.

HLI would eventually answer[61] the petition/protest of the Supervisory Group. On the other hand, HLI's answer[62] to the AMBALA petition was contained in its letter dated January 21, 2005 also filed with DAR.

Meanwhile, the DAR constituted a Special Task Force to attend to issues relating to the SDP of HLI. Among other duties, the Special Task Force was mandated to review the terms and conditions of the SDOA and PARC Resolution No. 89-12-2 relative to HLI's SDP; evaluate HLI's compliance reports; evaluate the merits of the petitions for the revocation of the

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[58] *Id.* at 546.

[59] *Id.* at 175-183.

[60] *Id.* at 442, Mallari's Comment to Petition. Mallari would, per his account, breakaway from AMBALA to form, with ex-AMBALA members, Farmers Agrarian Reform Movement, Inc. or FARM.

[61] *Id.* at 159-174.

[62] *Id.* at 184-192.

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SDP; conduct ocular inspections or field investigations; and recommend appropriate remedial measures for approval of the Secretary.[63]

After investigation and evaluation, the Special Task Force submitted its "Terminal Report: Hacienda Luisita, Incorporated (HLI) Stock Distribution Plan (SDP) Conflict"[64] dated September

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[63] *Id.* at 679-680.

[64] *Id.* at 386-405. The following are the pertinent findings of the Special Task Force as stated in its Terminal Report:

IV. IDENTIFICATION OF THE PROBLEMS/ISSUES/CONCERNS:

Matrix on the Comparative Views of the Farmer Groups *vis-à-vis* those of HLI Management, Along With the Corresponding FGD/OCI. Results was prepared and the compliance reports submitted, the petitions of the FWBs, particularly the AMBALA and the Supervisory Group, together with the respective responses to said petitions by HLI management and the FGD/OCI results were utilized to make a comparative summary, exemplified hereunder.

1. INDIVIDUAL ISSUES RAISED BY THE *SUPERVISORY GROUP* OF HACIENDA LUISITA INCORPORATED *VIS-Á-VIS* REJOINDER OF HLI AND OBSERVATION OF TF.

1.1. Issue: Non-enjoyment of the rights and privileges that were supposed to be given to the FWBs as stated in the [MOA] prompted the supervisory group to claim for the "one percent (1%)" share from the HLI representing their share as supervisors during the transition period.

- **HLI management:** Such claim is a total misapprehension of *Section 32 of R.A. No. 6657*, the last paragraph of which requires the payment of 1% of the gross sale to managerial, supervisory and technical workers at the time of the effectivity of *R.A. No. 6657*. There were no such managerial employees and supervisors engaged in temporarily managing and supervising the operation of the land until its final turnover to the farmworkers since there was no land to transfer in the first place.

- **The Task Force position:** That Section 32 of R.A. No. 6657 may not directly apply to the instant case but the non-realization of the said 1% share of expectation in the gross sale is a cause of disenchantment. The claim for the 1% share is not included in the MOA. x x x

1.2. Issue: **Non-receipt of the 10% dividend**

- HLI contends that the distribution of said dividend does not apply to corporate farms like HLI which opted for the SD Plan.

- **Task force finding:** The FWBs do not receive such financial return despite the stipulation on the matter.

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1.3. Issue: **On the three percent (3%) out of the thirty-three percent (33%) representing the equity shares given from the proceeds of the sale of the 500 hectares (converted to non-agricultural use).**

• The **HLI management** argues that the corporation, banking on the legal fiction of separate corporate existence, is not obliged to give 33% of the **gross selling price** of the land since the legal owner is the corporation itself and not the stockholders. And the 3% was given by the HLI merely as a bonus for the FWBs.

• **The Task Force position:** Though, allegedly, the supervisory group receives the 3% gross production share and that others alleged that they received 30 million pesos still others maintain that they have not received anything yet. Item No. 4 of the MOA is clear and must be followed. There is a distinction between the **total gross sales** from the **production of the land** and the **proceeds** from the **sale of the land**. The former refers to the fruits/yield of the agricultural land while the latter is the land itself. The phrase "the beneficiaries are entitled every year to an amount approximately equivalent to 3% would only be feasible if the subject is the produce since there is at least one harvest per year, while such is not the case in the sale of the agricultural land. This negates then the claim of HLI that, all that the FWBs can be entitled to, if any, is only 3% of the purchase price of the converted land.

• Besides, the ***Conversion Order*** dated 14 August 1996 provides that "*the benefits, wages and the like, presently received by the FWBs shall not in any way be reduced or adversely affected.* ***Three percent of the gross selling price of the sale of the converted land shall be awarded to the beneficiaries of the SDO***." The 3% gross production share then is different from the 3% proceeds of the sale of the converted land and, with more reason, the 33% share being claimed by the FWBs as part owners of the Hacienda, should have been given the FWBs, as stockholders, and to which they could have been entitled if only the land were acquired and redistributed to them under the CARP.

1.4. Issue: **Illegal conversion and financial incapability of HLI to proceed with the proposed development, thereby leaving the areas unproductive.**

• The **HLI management** contends that the **Petition for Conversion** was duly approved by the DAR on 14 August 1996 and it had the conformity of more than 5,000 FWBs who signed a manifesto of support.

• In the ***Petitions*** and/during the ***OCI/FGD*** [Ocular Inspection/Focused Group Discussion] the 500 hectares subject of conversion appear to still remain undeveloped. A clear example is the Central Techno Park which has a landscaped entrance and concrete roads but the only things which can be seen inside the premises are cogon grasslands. The FWBs further maintained that they were either not given any monetary benefit from the conversion of the 500 hectares or that they were only partially given.

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2. CONCERNS MANIFESTED IN THE PETITION FILED BY THE *ALYANSA NG MGA MANGGAGAWANG BUKID NG HACIENDA LUISITA (AMBALA)* LED BY MR. RENE GALANG

2.1. Issue: **That DAR Administrative Order No. 10, series of 1988, guidelines in the corporate availment of SDO, should observe Section 31 of R.A. No. 6657 qualified beneficiaries and provide that they (FWBs) be allowed to buy the land from the company.**

The **HLI management** posits the proposition that ***Section 31*** is very clear and unambiguous. It grants to the FWBs the right to purchase shares of stocks in the corporation that owns the agricultural land itself and not the land. HLI is correct in this unless the SDP is disregarded.

2.2. Issue: **Cancellation of the SDO and immediate coverage of the area are requested as the agreements in the implementation of the SDO were allegedly not followed/complied with.**

• The HLI management warranted that subject SD Plan is the most feasible scheme/alternative *vis-à-vis* physical distribution of the landholding under compulsory acquisition.

• During the ***FGD/OCI***, it was represented that the terms, conditions and benefits provided for in the MOA/commitment appear not to have been substantially followed. **Hereunder, is a more detailed discussion of the issues:**

2.2.1. **On the issue of non compliance with the MOA**

* FWBs are supposed to receive ₱700-800 dividends annually.

* ₱800-1000 production sharing per year. The *Hacienda* is operating continuously which only proves that the *Hacienda* is earning.

• HLI, however, claims that it is not incurring profits, thus, there are no dividends to be distributed. But the shares of stocks and 3% production share have been given.

• ***FGD/OCI* finding** shows that the number of shares of stocks to be received by the FWBs, depends on their designation (*i.e.*, permanent, casual or seasonal) and on the number of **man days. Retired** and **retrenched workers** are not given shares of stocks and cease as share holders. Undisputedly, the setup under the MOA is one-sided in favor the HLI. The work schedule, upon which the extent of entitlement to be granted shares of stock is wholly within the prerogative and discretion of HLI management that a FWB can still be denied thereof by the simple expediency of not giving him any working hours/days. And this is made possible by the fact that [there] are more farmers/farmworkers in its employ than what is, according to HLI, necessary to make it operational.

2.2.2. **On the issue of representation**

• It was verified that the Board of Directors election is annually conducted. However, majority of the FWBs are no longer interested and, in fact, have

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boycotted the elections because of the minority representation of the FWBs (4 as against 7). They claim that they are always outnumbered and some claim that the representatives elected are pro management. x x x [N]o fruitful and harmonious corporate activities can be expected as any resistance will be counter-productive, that to continue the operation under the SDP that is challenged herein will only be an empty exercise. The farmers and farmworkers will not, under the circumstances, be able to realize the contemplated receipt of benefits under the Program.

2.2.3. **On the issue of the 240-square meter homelot**

- As to the 240 square meter homelots, not all of the FWBs were given homelots. Of those given, they complain that they still do not have the corresponding titles. And, those already given titles maintain that said documents are useless as such, for they cannot even be used as bank collaterals, despite even the lapse of the 5-year prescriptive period, because banks and other financial institutions refuse to honor the same without clearance from the HLI management. x x x

2.2.4. **On the issue of coverage of the Hacienda**

- The **HLI** contends that dividing the 4,915.75 hectares among 6,296 beneficiaries would result to a farm lot of 0.78 hectare per individual FWB, which is not an economic size farm. Differences in the physical conditions of the landholding must be considered such as soil fertility and accessibility. The question of who would get the fertile or accessible part of the land and who would receive less would result/culminate in a "battle royale" among the FWBs.

DAR has established guidelines on the matter of such allocations and no problem has been encountered in its implementation of the CARP. By and large for a whole scale cultivation and production, formation of cooperatives has proven to be an effective mechanism to address the problem. The law even encourages the use of such combination [*cf.* Section 29, (3rd par.), Rep. Act No. 6657].

2.2.5. **On the agreement that other benefits will be given other than those provided for in the MOA**

- It was stipulated that the SDO would provide the FWBs other benefits x x x a less than a hectare-farm would not be able to provide, like the 3% of the gross production sales, to be shared with the FWBs, on top of their regular compensation.

- The FWBs do not receive any other benefits under the MOA except the aforementioned [(*viz*: shares of stocks (partial), 3% gross production sale (not all) and homelots (not all)].

V. PRELIMINARY CONSIDERATIONS

1. The common issues raised by the petitioners are focused on the revocation of the existing SDO that was proposed by HLI and approved by

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the PARC on ground, among others that the provisions of **Section 31** of **R.A. No. 6657**, upon which the SDO/SDP was based is contrary to the basic policy of the agrarian reform program on ***Land Acquisition and Redistribution***, as may be gleaned from the second paragraph of ***Section 2 of R.A. No. 6657***, which reads:

> "*To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and to improve the quality of their lives through greater productivity of agricultural lands.*" *(underscoring supplied).*

Envisioned in the foregoing provision is the physical land transfer to prospective beneficiaries as reiterated in **Section 5** thereof, as follows:

> "***Schedule of Implementation***. *The distribution of all lands covered by this Act shall be implemented immediately and completed within ten (10) years from the effectivity thereof.*"

2. While SDO/SDP is an alternative arrangement to the physical distribution of lands pursuant to **Section 31** of **R.A. No. 6657**, logic and reason dictate that such agreement must materialize within a specific period during the lifetime of CARP, stating clearly therein when such arrangement must end. The aforementioned provision may be considered as the provision of the law on "*suspended coverage*," parallel to the provisions of *Section 11* on *Commercial Farming* where coverage of CARP is deferred for **ten (10) years** after the effectivity of Republic Act No. 6657. Stated simply, owners of commercial farms are given a chance to recoup their investment for ten (10) years before same is finally subjected to coverage under the CARP.

VI. FINDINGS, ANALYSIS AND RECOMMENDATION:

1. Providing for the quintessence and spirit of the agrarian reform program, Republic Act No. 6657 explicitly provides:

> "SECTION 2. Declaration of Principles and Policies. — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture.
>
> To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands" (underscoring added).

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Within the context of the foregoing policy/objective, the farmer/farmworker beneficiaries (FWBs) in agricultural land owned and operated by corporations may be granted option by the latter, with the intervention and prior certification of DAR, "x x x the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total asset x x x" (Section 31, Rep. Act No. 6657). Toward this end, DAR issued Administrative Order No. 10, series of 1988, copy of which is attached as ***Annex "K"*** and made an integral part hereof, which requires that the stock distribution option (SDO) shall meet the following criteria, reading, *inter alia*:

> "a. that the continued operation of the corporation with its agricultural land intact and unfragmented is viable, with potential for growth and increased profitability;
>
> "b. that the plan for stock distribution to qualified beneficiaries would result in increased income and greater benefits to them, than if the lands were divided and distributed to them individually;
>
> x x x x x x x x x

And to ensure, effective and fair implementation of the contemplated Stock Distribution Plan (SDP), the said AO also provides:

> "SECTION 12. *Revocation of Certificate of Compliance* — Non-compliance with any of the requirements of Section 31 of RA 6657, as implemented by these Implementing Guidelines shall be grounds for the revocation of the Certificate of Compliance issued to the corporate landowner-applicant.
>
> SECTION 13. *Reservation Clause* — Nothing herein shall be construed as precluding the PARC from making its own independent evaluation and assessment of the stock distribution plan of the corporate landowner-applicant and from prescribing other requirements."

Herein, however, there is yet no Certificate of Compliance issued.

The reason is simple. Despite the lapse of sixteen (16) years, from the time the SDP was approved in November 1989, by resolution of the x x x (PARC), the objective and policy of CARP, *i.e.*, acquisition and distribution (herein under the [SDP], only shares of stocks) is yet to be fully completed; the FWBs, instead of the promised/envisioned better life under the CARP (therein, as corporate owner), do still live in want, in abject poverty, highlighted by the resulting loss of lives in their vain/futile attempt to be financially restored at least to where they were before the CARP (SDP) was implemented. While they were then able to make both ends meet, with the SDP, their lives became miserable.

2. For the foregoing considerations, as further dramatized by the following violations/noncompliance with the guidelines prescribed, which are legally presumed as integrated in the agreements/accords/stipulations arrived at thereunder like the HLI SDP, namely:

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2.1. Noncompliance with Section 11 of Administrative Order No. 10, Series of 1988, which provides:

> "The approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation plan."

The [SDP], however, submitted a 30-year implementation period in terms of the transfer of shares of stocks to the farmworkers beneficiaries (FWBs). The MOA provides:

> "At the end of each fiscal year: for a period of 30 years, SECOND PARTY shall arrange with the FIRST PARTY the acquisition and distribution to the THIRD PARTY on the basis of the number of days worked and at no cost to them of one-thirtieth (1/30) of ..."

Plainly, pending the issuance of the corresponding shares of stocks, the FWBs remain ordinary farmers and/or farmworker and the land remain under the full ownership and control of the original owner, the HLI/TADECO.

To date the issuance and transfer of the shares of stocks, together with the recording of the transfer, are yet to be complied with.

2.2. Noncompliance with the representations/warranties made under Section 5 (a) and (b) of said Administrative Order No. 10.

As claimed by HLI itself, the corporate activity has already stopped that the contemplated profitability, increased income and greater benefits enumerated in the SDP have remained mere illusions.

2.3. The agricultural land involved was not maintained "unfragmented". At least, 500 hectares hereof have been carved out after its land use has been converted to non-agricultural uses.

The **recall** of said SDP/SDO of HLI is recommended. More so, since:

1. **It is contrary to Public Policy**

Section 2 of [RA] 6657 provides that the welfare of landless farmworkers will receive the highest consideration to promote social justice. As such, the State undertake a more equitable distribution and ownership of land that shall provide farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

In the case of Hacienda Luisita, the farmworkers alleged that the quality of their lives has not improved. In fact it even deteriorated especially with the HLI Management declaration that the company has not gained profits, in the last 15 years, that there could be no declaration and distribution of dividends.

2. The matter of issuance/distribution shares of stocks in lieu of actual distribution of the agricultural land involved, was made totally dependent on

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the discretion/caprice of HLI. Under the setup, the agreement is grossly onerous to the FWBs as their man days of work cannot depart from whatever management of HLI unilaterally directs.

They can be denied the opportunity to be granted a share of stock by just not allowing them to work altogether under the guise of rotation. Meanwhile, within the 30-year period of bondage, they may already reach retirement or, worse, get retrenched for any reason, then, they forever lose whatever benefit he could have received as regular agrarian beneficiary under the CARP if only the SDP of HLI were not authorized and approved.

Incidentally, the FWBs did not have participation in the valuation of the agricultural land for the purpose of determining its proportionate equity in relation to the total assets of the corporation. Apparently, the sugarlands were undervalued.

3. The FWBs were misled into believing by the HLI, through its carefully worded Proposal that "x x x the stock distribution plan envisaged by [Tadeco], in effect, assured of:

> "A. Distributing the shares of stock over a numbers of years among the qualified beneficiaries at no cost to them;
>
> B. Allowing the farmworker to continue to work on the land as such and receive the wages and other benefits provided for by his collective bargaining agreement with the corporate landowner;
>
> C. Entitling him to receive dividends, whether in cash or in stock, on the shares already distributed to him and benefit from whatever appreciation in value that the said shares may gain as the corporation becomes profitable;
>
> D. Qualifying him to become the recipient of whatever income-augmenting and benefit-improving schemes that the spin-off corporation may establish, such as the payment of the guaranteed three (3%) percent of gross sales every year and the free residential or homelots to be allotted to family beneficiaries of the plan; and
>
> E. Keeping the agricultural land intact and unfragmented, to maintain the viability of the sugar operation involving the farm as a single unit and thus warrant to the acknowledged farmworker-beneficiaries, hand-in-[hand] with their acquisition of the shares of the capital stock of the corporation owing the land, a continuing and stable source of income." (***Annex "A"***, *supra*).

At the expense of being repetitive, the be sugar-coated assurances were, more than enough to made them fall for the SDO as they made them feel rich as "stock holder" of a rich and famous corporation despite the dirt in their hands and the tatters, they use; given the feeling of security of tenure in their work when there is none; expectation to receive dividends when the corporation has already suspended operations allegedly due to loses; and a stable sugar production by maintaining the agricultural lands when a substantial portion thereof of, almost 1/8 of the total area, has already been converted to non-agricultural uses.

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22, 2005 (Terminal Report), finding that HLI has not complied with its obligations under RA 6657 despite the implementation of the SDP.[65] The Terminal Report and the Special Task Force's recommendations were adopted by then DAR Sec. Nasser Pangandaman (Sec. Pangandaman).[66]

Subsequently, Sec. Pangandaman recommended to the PARC Executive Committee (Excom) (a) the recall/revocation of PARC Resolution No. 89-12-2 dated November 21, 1989 approving HLI's SDP; and (b) the acquisition of Hacienda Luisita through the compulsory acquisition scheme. Following review, the PARC Validation Committee favorably endorsed the DAR Secretary's recommendation afore-stated.[67]

On December 22, 2005, the PARC issued the assailed Resolution No. 2005-32-01, disposing as follows:

> NOW, THEREFORE, on motion duly seconded, RESOLVED, as it is HEREBY RESOLVED, to approve and confirm the recommendation of the PARC Executive Committee adopting *in toto* the report of the PARC ExCom Validation Committee affirming the recommendation of the DAR to recall/revoke the SDO plan of Tarlac Development Corporation/Hacienda Luisita Incorporated.
>
> RESOLVED, further, that the lands subject of the recalled/revoked TDC/HLI SDO plan be forthwith placed under the compulsory coverage or mandated land acquisition scheme of the [CARP].
>
> APPROVED.[68]

A copy of Resolution No. 2005-32-01 was served on HLI the following day, December 23, without any copy of the documents adverted to in the resolution attached. A letter-request dated December 28, 2005[69] for certified copies of said documents was sent to, but was not acted upon by, the PARC secretariat.

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[65] *Id.* at 694-699.

[66] *Id.* at 339-342.

[67] *Id.* at 100.

[68] *Id.* at 101.

[69] *Id.* at 146.

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Therefrom, HLI, on January 2, 2006, sought reconsideration.[70] On the same day, the DAR Tarlac provincial office issued the Notice of Coverage[71] which HLI received on January 4, 2006.

Its motion notwithstanding, HLI has filed the instant recourse in light of what it considers as the DAR's hasty placing of Hacienda Luisita under CARP even before PARC could rule or even read the motion for reconsideration.[72] As HLI later rued, it "can not know from the above-quoted resolution the facts and the law upon which it is based."[73]

PARC would eventually deny HLI's motion for reconsideration via Resolution No. 2006-34-01 dated May 3, 2006.

By Resolution of June 14, 2006,[74] the Court, acting on HLI's motion, issued a temporary restraining order,[75] enjoining the implementation of Resolution No. 2005-32-01 and the notice of coverage.

On July 13, 2006, the OSG, for public respondents PARC and the DAR, filed its Comment[76] on the petition.

On December 2, 2006, Noel Mallari, impleaded by HLI as respondent in his capacity as "Sec-Gen. AMBALA," filed his Manifestation and Motion with Comment Attached dated December 4, 2006 (Manifestation and Motion).[77] In it, Mallari stated that he has broken away from AMBALA with other AMBALA ex-members and formed Farmworkers Agrarian Reform Movement, Inc. (FARM).[78] Should this shift in alliance

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[70] *Id.* at 107-140.

[71] *Id.* at 103-106.

[72] *Id.* at 19.

[73] *Id.* at 52

[74] *Id.* at 255-256.

[75] *Id.* at 257-259.

[76] *Id.* at 334-367.

[77] *Id.* at 436-459.

[78] Attys. Edgar Bernal and Florisa Almodiel signed the motion/manifestation as counsel of Mallari and/or FARM.

deny him standing, Mallari also prayed that FARM be allowed to intervene.

As events would later develop, Mallari had a parting of ways with other FARM members, particularly would-be intervenors Renato Lalic, *et al*. As things stand, Mallari returned to the AMBALA fold, creating the AMBALA-Noel Mallari faction and leaving Renato Lalic, *et al*. as the remaining members of FARM who sought to intervene.

On January 10, 2007, the Supervisory Group[79] and the AMBALA-Rene Galang faction submitted their Comment/ Opposition dated December 17, 2006.[80]

On October 30, 2007, RCBC filed a Motion for Leave to Intervene and to File and Admit Attached Petition-In-Intervention dated October 18, 2007.[81] LIPCO later followed with a similar motion.[82] In both motions, RCBC and LIPCO contended that the assailed resolution effectively nullified the TCTs under their respective names as the properties covered in the TCTs were veritably included in the January 2, 2006 notice of coverage. In the main, they claimed that the revocation of the SDP cannot legally affect their rights as innocent purchasers for value. Both motions for leave to intervene were granted and the corresponding petitions-in-intervention admitted.

On August 18, 2010, the Court heard the main and intervening petitioners on oral arguments. On the other hand, the Court, on August 24, 2010, heard public respondents as well as the respective counsels of the AMBALA-Mallari-Supervisory Group, the AMBALA-Galang faction, and the FARM and its 27 members[83] argue their case.

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[79] The Supervisory Group later teamed up with the AMBALA-Mallari faction. For brevity, they are referred to herein as the "AMBALA-Mallari-Supervisory Group."

[80] *Rollo*, pp. 530-641.

[81] *Id.* at 1350-1359.

[82] *Id.* at 1535-1544.

[83] TSN, August 24, 2010, p. 229.

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Prior to the oral arguments, however, HLI; AMBALA, represented by Mallari; the Supervisory Group, represented by Suniga and Andaya; and the United Luisita Workers Union, represented by Eldifonso Pingol, filed with the Court a joint submission and motion for approval of a Compromise Agreement (English and Tagalog versions) dated August 6, 2010.

On August 31, 2010, the Court, in a bid to resolve the dispute through an amicable settlement, issued a Resolution[84] creating a Mediation Panel composed of then Associate Justice Ma. Alicia Austria-Martinez, as chairperson, and former CA Justices Hector Hofileña and Teresita Dy-Liacco Flores, as members. Meetings on five (5) separate dates, *i.e.*, September 8, 9, 14, 20, and 27, 2010, were conducted. Despite persevering and painstaking efforts on the part of the panel, mediation had to be discontinued when no acceptable agreement could be reached.

The Issues

HLI raises the following issues for our consideration:

I.

WHETHER OR NOT PUBLIC RESPONDENTS PARC AND SECRETARY PANGANDAMAN HAVE JURISDICTION, POWER AND/OR AUTHORITY TO NULLIFY, RECALL, REVOKE OR RESCIND THE SDOA.

II.

[IF SO], x x x CAN THEY STILL EXERCISE SUCH JURISDICTION, POWER AND/OR AUTHORITY AT THIS TIME, *I.E.*, AFTER SIXTEEN (16) YEARS FROM THE EXECUTION OF THE SDOA AND ITS IMPLEMENTATION WITHOUT VIOLATING SECTIONS 1 AND 10 OF ARTICLE III (BILL OF RIGHTS) OF THE CONSTITUTION AGAINST DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW AND THE IMPAIRMENT OF CONTRACTUAL RIGHTS AND OBLIGATIONS? MOREOVER, ARE THERE LEGAL GROUNDS UNDER THE CIVIL CODE, *viz*, ARTICLE 1191 x x x, ARTICLES 1380, 1381 AND 1382 x x x ARTICLE 1390 x x x AND ARTICLE 1409 x x x THAT CAN BE

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[84] *Rollo*, pp. 3060-3062.

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INVOKED TO NULLIFY, RECALL, REVOKE, OR RESCIND THE SDOA?

III.

WHETHER THE PETITIONS TO NULLIFY, RECALL, REVOKE OR RESCIND THE SDOA HAVE ANY LEGAL BASIS OR GROUNDS AND WHETHER THE PETITIONERS THEREIN ARE THE REAL PARTIES-IN-INTEREST TO FILE SAID PETITIONS.

IV.

WHETHER THE RIGHTS, OBLIGATIONS AND REMEDIES OF THE PARTIES TO THE SDOA ARE NOW GOVERNED BY THE CORPORATION CODE (BATAS PAMBANSA BLG. 68) AND NOT BY THE x x x [CARL] x x x.

On the other hand, RCBC submits the following issues:

I.

RESPONDENT PARC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT EXCLUDE THE SUBJECT PROPERTY FROM THE COVERAGE OF THE CARP DESPITE THE FACT THAT PETITIONER-INTERVENOR RCBC HAS ACQUIRED VESTED RIGHTS AND INDEFEASIBLE TITLE OVER THE SUBJECT PROPERTY AS AN INNOCENT PURCHASER FOR VALUE.

A. THE ASSAILED RESOLUTION NO. 2005-32-01 AND THE NOTICE OF COVERAGE DATED 02 JANUARY 2006 HAVE THE EFFECT OF NULLIFYING TCT NOS. 391051 AND 391052 IN THE NAME OF PETITIONER-INTERVENOR RCBC.

B. AS AN INNOCENT PURCHASER FOR VALUE, PETITIONER-INTERVENOR RCBC CANNOT BE PREJUDICED BY A SUBSEQUENT REVOCATION OR RESCISSION OF THE SDOA.

II.

THE ASSAILED RESOLUTION NO. 2005-32-01 AND THE NOTICE OF COVERAGE DATED 02 JANUARY 2006 WERE ISSUED WITHOUT AFFORDING PETITIONER-INTERVENOR

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RCBC ITS RIGHT TO DUE PROCESS AS AN INNOCENT PURCHASER FOR VALUE.

LIPCO, like RCBC, asserts having acquired vested and indefeasible rights over certain portions of the converted property, and, hence, would ascribe on PARC the commission of grave abuse of discretion when it included those portions in the notice of coverage. And apart from raising issues identical with those of HLI, such as but not limited to the absence of valid grounds to warrant the rescission and/or revocation of the SDP, LIPCO would allege that the assailed resolution and the notice of coverage were issued without affording it the right to due process as an innocent purchaser for value. The government, LIPCO also argues, is estopped from recovering properties which have since passed to innocent parties.

Simply formulated, the principal determinative issues tendered in the main petition and to which all other related questions must yield boil down to the following: (1) matters of standing; (2) the constitutionality of Sec. 31 of RA 6657; (3) the jurisdiction of PARC to recall or revoke HLI's SDP; (4) the validity or propriety of such recall or revocatory action; and (5) corollary to (4), the validity of the terms and conditions of the SDP, as embodied in the SDOA.

Our Ruling

I.

We first proceed to the examination of the preliminary issues before delving on the more serious challenges bearing on the validity of PARC's assailed issuance and the grounds for it.

Supervisory Group, AMBALA and their respective leaders are real parties-in-interest

HLI would deny real party-in-interest status to the purported leaders of the Supervisory Group and AMBALA, *i.e.*, Julio Suniga, Windsor Andaya, and Rene Galang, who filed the revocatory petitions before the DAR. As HLI would have it, Galang, the self-styled head of AMBALA, gained HLI employment in June 1990 and, thus, could not have been a party

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to the SDOA executed a year earlier.[85] As regards the Supervisory Group, HLI alleges that supervisors are not regular farmworkers, but the company nonetheless considered them FWBs under the SDOA as a mere concession to enable them to enjoy the same benefits given qualified regular farmworkers. However, if the SDOA would be canceled and land distribution effected, so HLI claims, citing *Fortich v. Corona*,[86] the supervisors would be excluded from receiving lands as farmworkers other than the regular farmworkers who are merely entitled to the "fruits of the land."[87]

The SDOA no less identifies "the SDP qualified beneficiaries" as "**the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by [HLI]**."[88] Galang, per HLI's own admission, is employed by HLI, and is, thus, a qualified beneficiary of the SDP; he comes within the definition of a real party-in-interest under Sec. 2, Rule 3 of the Rules of Court, meaning, one who stands to be benefited or injured by the judgment in the suit or is the party entitled to the avails of the suit.

The same holds true with respect to the Supervisory Group whose members were admittedly employed by HLI and whose names and signatures even appeared in the annex of the SDOA. Being qualified beneficiaries of the SDP, Suniga and the other 61 supervisors are certainly parties who would benefit or be prejudiced by the judgment recalling the SDP or replacing it with some other modality to comply with RA 6657.

Even assuming that members of the Supervisory Group are not regular farmworkers, but are in the category of "other farmworkers" mentioned in Sec. 4, Article XIII of the Constitution,[89] thus

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[85] *Id.* at 81.

[86] G.R. No. 131457, August 19, 1999, 312 SCRA 751.

[87] *Rollo*, p. 82.

[88] *Id.* at 149.

[89] Sec. 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farm workers, who are landless,

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only entitled to a share of the fruits of the land, as indeed *Fortich* teaches, this does not detract from the fact that they are still identified as being among the "SDP qualified beneficiaries." As such, they are, thus, entitled to bring an action upon the SDP.[90] At any rate, the following admission made by Atty. Gener Asuncion, counsel of HLI, during the oral arguments should put to rest any lingering doubt as to the status of protesters Galang, Suniga, and Andaya:

> Justice Bersamin: x x x I heard you a while ago that you were conceding the qualified farmer beneficiaries of Hacienda Luisita were real parties in interest?
>
> Atty. Asuncion: Yes, Your Honor please, real party in interest which that question refers to the complaints of protest initiated before the DAR and the real party in interest there be considered as possessed by the farmer beneficiaries who initiated the protest.[91]

Further, under Sec. 50, paragraph 4 of RA 6657, farmer-leaders are expressly allowed to represent themselves, their fellow farmers or their organizations in any proceedings before the DAR. Specifically:

> SEC. 50. Quasi-Judicial Powers of the DAR. — x x x
>
> x x x x x x x x x
>
> **Responsible farmer leaders shall be allowed to represent themselves, their fellow farmers or their organizations in any proceedings before the DAR**: Provided, however, that when there are two or more representatives for any individual or group, the

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to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.

[90] *Consumido v. Ros*, G.R. No. 166875, July 31, 2007, 528 SCRA 696, 702.

[91] TSN, August 18, 2010, p. 141.

representatives should choose only one among themselves to represent such party or group before any DAR proceedings. (Emphasis supplied.)

Clearly, the respective leaders of the Supervisory Group and AMBALA are contextually real parties-in-interest allowed by law to file a petition before the DAR or PARC.

This is not necessarily to say, however, that Galang represents AMBALA, for as records show and as HLI aptly noted,[92] his "*petisyon*" filed with DAR did not carry the usual authorization of the individuals in whose behalf it was supposed to have been instituted. To date, such authorization document, which would logically include a list of the names of the authorizing FWBs, has yet to be submitted to be part of the records.

PARC's Authority to Revoke a Stock Distribution Plan

On the postulate that the subject jurisdiction is conferred by law, HLI maintains that PARC is without authority to revoke an SDP, for neither RA 6657 nor EO 229 expressly vests PARC with such authority. While, as HLI argued, EO 229 empowers PARC to approve the plan for stock distribution in appropriate cases, the empowerment only includes the power to disapprove, but not to recall its previous approval of the SDP after it has been implemented by the parties.[93] To HLI, it is the court which has jurisdiction and authority to order the revocation or rescission of the PARC-approved SDP.

We disagree.

Under Sec. 31 of RA 6657, as implemented by DAO 10, the authority to approve the plan for stock distribution of the corporate landowner belongs to PARC. However, contrary to petitioner HLI's posture, PARC also has the power to revoke the SDP which it previously approved. It may be, as urged, that RA 6657 or other executive issuances on agrarian reform do not explicitly vest the PARC with the power to revoke/recall an approved SDP. Such power or authority, however, is deemed

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[92] *Rollo*, p. 871.

[93] *Id.* at 38.

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possessed by PARC under the **principle of necessary implication, a basic postulate that what is implied in a statute is as much a part of it as that which is expressed**.[94]

We have explained that "every statute is understood, by implication, to contain all such provisions as may be necessary to effectuate its object and purpose, or to make effective rights, powers, privileges or jurisdiction which it grants, including all such collateral and subsidiary consequences as may be fairly and logically inferred from its terms."[95] Further, "every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege.[96]

Gordon v. Veridiano II is instructive:

> **The power to approve a license includes by implication, even if not expressly granted, the power to revoke it.** By extension, the power to revoke is limited by the authority to grant the license, from which it is derived in the first place. Thus, if the FDA grants a license upon its finding that the applicant drug store has complied with the requirements of the general laws and the implementing administrative rules and regulations, it is only for their violation that the FDA may revoke the said license. By the same token, having granted the permit upon his ascertainment that the conditions thereof as applied x x x have been complied with, it is only for the violation of such conditions that the mayor may revoke the said permit.[97] (Emphasis supplied.)

Following the doctrine of necessary implication, it may be stated that the conferment of express power to approve a plan for stock distribution of the agricultural land of corporate owners necessarily includes the power to revoke or recall the approval of the plan.

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[94] *Atienza v. Villarosa*, G.R. No. 161081, May 10, 2005, 458 SCRA 385, 403; citing *Chua v. Civil Service Commission*, G.R. No. 88979, February 7, 1992, 206 SCRA 65.

[95] *Id.*

[96] *Id.*

[97] G.R. No. 55230, November 8, 1988, 167 SCRA 51, 59-60.

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As public respondents aptly observe, to deny PARC such revocatory power would reduce it into a toothless agency of CARP, because the very same agency tasked to ensure compliance by the corporate landowner with the approved SDP would be without authority to impose sanctions for non-compliance with it.[98] With the view We take of the case, only PARC can effect such revocation. The DAR Secretary, by his own authority as such, cannot plausibly do so, as the acceptance and/or approval of the SDP sought to be taken back or undone is the act of PARC whose official composition includes, no less, the President as chair, the DAR Secretary as vice-chair, and at least eleven (11) other department heads.[99]

On another but related issue, the HLI foists on the Court the argument that subjecting its landholdings to compulsory distribution after its approved SDP has been implemented would impair the contractual obligations created under the SDOA.

The broad sweep of HLI's argument ignores certain established legal precepts and must, therefore, be rejected.

A law authorizing interference, when appropriate, in the contractual relations between or among parties is deemed read into the contract and its implementation cannot successfully be resisted by force of the non-impairment guarantee. There is, in that instance, no impingement of the impairment clause, the non-impairment protection being applicable only to laws that derogate **prior** acts or contracts by enlarging, abridging or in any manner changing the intention of the parties. Impairment, in fine, obtains if a **subsequent** law changes the terms of a contract between the parties, imposes new conditions, dispenses with those agreed upon or withdraws existing remedies for the enforcement of the rights of the parties.[100] Necessarily, the constitutional proscription would not apply to laws already in

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[98] Public respondents' Memorandum, p. 24.

[99] EO 229, Sec. 18.

[100] *BANAT Party-list v. COMELEC*, G.R. No. 177508, August 7, 2009, 595 SCRA 477, 498.

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effect at the time of contract execution, as in the case of RA 6657, in relation to DAO 10, *vis-à-vis* HLI's SDOA. As held in *Serrano v. Gallant Maritime Services, Inc.*:

> The prohibition [against impairment of the obligation of contracts] is aligned with the general principle that laws newly enacted have only a *prospective operation*, and cannot affect acts or contracts already perfected; however, as to laws already in existence, their provisions are read into contracts and deemed a part thereof. **Thus, the non-impairment clause under Section 10, Article II [of the Constitution] is limited in application to laws about to be enacted that would in any way derogate from existing acts or contracts by enlarging, abridging or in any manner changing the intention of the parties thereto**.[101] (Emphasis supplied.)

Needless to stress, the assailed Resolution No. 2005-32-01 is not the kind of issuance within the ambit of Sec. 10, Art. III of the Constitution providing that "*[n]o law impairing the obligation of contracts shall be passed*."

Parenthetically, HLI tags the SDOA as an ordinary civil law contract and, as such, a breach of its terms and conditions is not a PARC administrative matter, but one that gives rise to a cause of action cognizable by regular courts.[102] This contention has little to commend itself. The SDOA is a **special contract imbued with public interest**, entered into and crafted pursuant to the provisions of RA 6657. It embodies the SDP, which requires for its validity, or at least its enforceability, PARC's approval. And the fact that the certificate of compliance[103] —

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[101] G.R. No. 167614, March 24, 2009, 582 SCRA 254, 275-276.

[102] *Rollo*, p. 40; TSN, August 18, 2010, p. 74.

[103] **DAO 10, Section 11.** ***Implementation/Monitoring of Plan*** — The approved [SDP] shall be implemented within three (3) months x x x.

Upon completion [of the stock distribution], the corporate landowner-applicant shall be issued a Certificate of Compliance. x x x

Section 12. Non-compliance with any of the requirements of Section 31 of RA 6675, as implemented by this Implementing Guidelines shall be grounds for the revocation of the Certificate of Compliance issued to the corporate landowner-applicant. x x x

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to be issued by agrarian authorities upon completion of the distribution of stocks—is revocable by the same issuing authority supports the idea that everything about the implementation of the SDP is, at the first instance, subject to administrative adjudication.

HLI also parlays the notion that the parties to the SDOA should now look to the Corporation Code, instead of to RA 6657, in determining their rights, obligations and remedies. The Code, it adds, should be the applicable law on the disposition of the agricultural land of HLI.

Contrary to the view of HLI, the rights, obligations and remedies of the parties to the SDOA embodying the SDP are primarily governed by RA 6657. It should abundantly be made clear that HLI was precisely created in order to comply with RA 6657, which the OSG aptly described as the "mother law" of the SDOA and the SDP.[104] It is, thus, paradoxical for HLI to shield itself from the coverage of CARP by invoking exclusive applicability of the Corporation Code under the guise of being a corporate entity.

Without in any way minimizing the relevance of the Corporation Code since the FWBs of HLI are also stockholders, its applicability is limited as the rights of the parties arising from the SDP should not be made to supplant or circumvent the agrarian reform program.

Without doubt, the Corporation Code is the general law providing for the formation, organization and regulation of private corporations. On the other hand, RA 6657 is the special law on agrarian reform. As between a general and special law, the latter shall prevail—*generalia specialibus non derogant*.[105] Besides, the present impasse between HLI and the private respondents

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[104] TSN, August 24, 2010, p. 13.

[105] *Koruga v. Arcenas*, G.R. Nos. 168332 and 169053, June 19, 2009, 590 SCRA 49, 68; citing *In Re: Petition for Assistance in the Liquidation of the Rural Bank of Bokod (Benguet), Inc., PDIC v. Bureau of Internal Revenue*, G.R. No. 158261, December 18, 2006, 511 SCRA 123, 141.

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is not an intra-corporate dispute which necessitates the application of the Corporation Code. What private respondents questioned before the DAR is the proper implementation of the SDP and HLI's compliance with RA 6657. Evidently, RA 6657 should be the applicable law to the instant case.

HLI further contends that the inclusion of the agricultural land of Hacienda Luisita under the coverage of CARP and the eventual distribution of the land to the FWBs would amount to a disposition of all or practically all of the corporate assets of HLI. HLI would add that this contingency, if ever it comes to pass, requires the applicability of the Corporation Code provisions on corporate dissolution.

We are not persuaded.

Indeed, the provisions of the Corporation Code on corporate dissolution would apply insofar as the winding up of HLI's affairs or liquidation of the assets is concerned. However, the mere inclusion of the agricultural land of Hacienda Luisita under the coverage of CARP and the land's eventual distribution to the FWBs will not, without more, automatically trigger the dissolution of HLI. As stated in the SDOA itself, the percentage of the value of the agricultural land of Hacienda Luisita in relation to the total assets transferred and conveyed by Tadeco to HLI comprises only 33.296%, following this equation: value of the agricultural lands divided by total corporate assets. By no stretch of imagination would said percentage amount to a disposition of all or practically all of HLI's corporate assets should compulsory land acquisition and distribution ensue.

This brings us to the validity of the revocation of the approval of the SDP sixteen (16) years after its execution pursuant to Sec. 31 of RA 6657 for the reasons set forth in the Terminal Report of the Special Task Force, as endorsed by PARC Excom. But first, the matter of the constitutionality of said section.

Constitutional Issue

FARM asks for the invalidation of Sec. 31 of RA 6657, insofar as it affords the corporation, as a mode of CARP compliance, to resort to stock distribution, an arrangement which, to FARM,

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impairs the fundamental right of farmers and farmworkers under Sec. 4, Art. XIII of the Constitution.[106]

To a more specific, but direct point, FARM argues that Sec. 31 of RA 6657 permits stock transfer in lieu of outright agricultural land transfer; in fine, there is stock certificate ownership of the farmers or farmworkers instead of them owning the land, as envisaged in the Constitution. For FARM, this modality of distribution is an anomaly to be annulled for being inconsistent with the basic concept of agrarian reform ingrained in Sec. 4, Art. XIII of the Constitution.[107]

Reacting, HLI insists that agrarian reform is not only about transfer of land ownership to farmers and other qualified beneficiaries. It draws attention in this regard to Sec. 3(a) of RA 6657 on the concept and scope of the term "**agrarian reform**." The constitutionality of a law, HLI added, cannot, as here, be attacked collaterally.

The instant challenge on the constitutionality of Sec. 31 of RA 6657 and necessarily its counterpart provision in EO 229 must fail as explained below.

When the Court is called upon to exercise its power of judicial review over, and pass upon the constitutionality of, acts of the executive or legislative departments, it does so only when the following essential requirements are first met, to wit:

(1) there is an actual case or controversy;

(2) that the constitutional question is raised at the earliest possible opportunity by a proper party or one with *locus standi*; and

(3) the issue of constitutionality must be the very *lis mota* of the case.[108]

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[106] TSN, August 24, 2010, p. 205.

[107] *Id.*

[108] *Garcia v. Executive Secretary*, G.R. No. 157584, April 2, 2009, 583 SCRA 119, 129; citing *Franciso, Jr. v. House of Representatives*, G.R. No. 160261, November 10, 2003, 415 SCRA 44.

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Not all the foregoing requirements are satisfied in the case at bar.

While there is indeed an actual case or controversy, intervenor FARM, composed of a small minority of 27 farmers, has yet to explain its failure to challenge the constitutionality of Sec. 3l of RA 6657, since as early as November 21, l989 when PARC approved the SDP of Hacienda Luisita or at least within a reasonable time thereafter and why its members received benefits from the SDP without so much of a protest. It was only on December 4, 2003 or 14 years after approval of the SDP via PARC Resolution No. 89-12-2 dated November 21, 1989 that said plan and approving resolution were sought to be revoked, but not, to stress, by FARM or any of its members, but by petitioner AMBALA. Furthermore, the AMBALA petition did NOT question the constitutionality of Sec. 31 of RA 6657, but concentrated on the purported flaws and gaps in the subsequent implementation of the SDP. Even the public respondents, as represented by the Solicitor General, did not question the constitutionality of the provision. On the other hand, FARM, whose 27 members formerly belonged to AMBALA, raised the constitutionality of Sec. 31 only on May 3, 2007 when it filed its Supplemental Comment with the Court. Thus, it took FARM some eighteen (18) years from November 21, 1989 before it challenged the constitutionality of Sec. 31 of RA 6657 which is quite too late in the day. The FARM members slept on their rights and even accepted benefits from the SDP with nary a complaint on the alleged unconstitutionality of Sec. 31 upon which the benefits were derived. The Court cannot now be goaded into resolving a constitutional issue that FARM failed to assail after the lapse of a long period of time and the occurrence of numerous events and activities which resulted from the application of an alleged unconstitutional legal provision.

It has been emphasized in a number of cases that the question of constitutionality will not be passed upon by the Court unless it is properly raised and presented in an appropriate case at the first opportunity.[109] FARM is, therefore, remiss in belatedly

[109] *ABS-CBN Broadcasting Corporation v. Philippine Multi-Media System, Inc.,* G.R. Nos. 175769-70, January 19, 2009, 576 SCRA 262,

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questioning the constitutionality of Sec. 31 of RA 6657. The second requirement that the constitutional question should be raised at the earliest possible opportunity is clearly wanting.

The last but the most important requisite that the constitutional issue must be the very *lis mota* of the case does not likewise obtain. The *lis mota* aspect is not present, the constitutional issue tendered not being critical to the resolution of the case. The unyielding rule has been to avoid, whenever plausible, an issue assailing the constitutionality of a statute or governmental act.[110] If some other grounds exist by which judgment can be made without touching the constitutionality of a law, such recourse is favored.[111] *Garcia v. Executive Secretary* explains why:

> *Lis Mota* — the fourth requirement to satisfy before this Court will undertake judicial review — means that the Court will not pass upon a question of unconstitutionality, although properly presented, *if the case can be disposed of on some other ground, such as the application of the statute or the general law.* The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined. This requirement is based on the rule that every law has in its favor the presumption of constitutionality; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative.[112] (Italics in the original.)

The *lis mota* in this case, proceeding from the basic positions originally taken by AMBALA (to which the FARM members previously belonged) and the Supervisory Group, is the alleged non-compliance by HLI with the conditions of the SDP to support a plea for its revocation. And before the Court, the *lis mota* is whether or not PARC acted in grave abuse of discretion when

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289 citing *Philippine Veterans Bank v. Court of Appeals*, G.R. No. 132561, June 30, 2005, 462 SCRA 336; *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.*, G.R. Nos. 152613, 152628, 162619-20 and 152870-71.

[110] *Franciso, Jr. v. House of Representatives, supra* note 108.

[111] *Alvarez v. PICOP Resources, Inc.*, G.R. Nos. 162243, *etc*., November 29, 2006, 508 SCRA 498, 552.

[112] *Supra* note 108, at 138-139.

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it ordered the recall of the SDP for such non-compliance and the fact that the SDP, as couched and implemented, offends certain constitutional and statutory provisions. To be sure, any of these key issues may be resolved without plunging into the constitutionality of Sec. 31 of RA 6657. Moreover, looking deeply into the underlying petitions of AMBALA, *et al.*, it is not the said section per se that is invalid, but rather it is the alleged application of the said provision in the SDP that is flawed.

It may be well to note at this juncture that Sec. 5 of RA 9700,[113] amending Sec. 7 of RA 6657, has all but superseded Sec. 31 of RA 6657 *vis-à-vis* the stock distribution component of said Sec. 31. In its pertinent part, Sec. 5 of RA 9700 provides: "**[T]hat after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition**." Thus, for all intents and purposes, the stock distribution scheme under Sec. 31 of RA 6657 is no longer an available option under existing law. The question of whether or not it is unconstitutional should be a moot issue.

It is true that the Court, in some cases, has proceeded to resolve constitutional issues otherwise already moot and academic[114] provided the following requisites are present:

> x x x *first*, there is a grave violation of the Constitution; *second*, the exceptional character of the situation and the paramount public interest is involved; *third*, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; *fourth*, the case is capable of repetition yet evading review.

These requisites do not obtain in the case at bar.

For one, there appears to be no breach of the fundamental law. Sec. 4, Article XIII of the Constitution reads:

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[113] An Act Strengthening the CARP, Extending the Acquisition and Distribution of all Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of RA 6657, as Amended and Appropriating Funds therefor.

[114] *Quizon v. Comelec*, 545 SCRA 635; *Mattel, Inc. v. Francisco*, 560 SCRA 506.

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

The wording of the provision is unequivocal—the farmers and regular farmworkers have a right TO OWN DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL. The basic law allows two (2) modes of land distribution—direct and indirect ownership. Direct transfer to individual farmers is the most commonly used method by DAR and widely accepted. Indirect transfer through collective ownership of the agricultural land is the alternative to direct ownership of agricultural land by individual farmers. The aforequoted Sec. 4 EXPRESSLY authorizes collective ownership by farmers. No language can be found in the 1987 Constitution that disqualifies or prohibits corporations or cooperatives of farmers from being the legal entity through which collective ownership can be exercised. The word "collective" is defined as "indicating a number of persons or things considered as constituting one group or aggregate,"[115] while "collectively" is defined as "in a collective sense or manner; in a mass or body."[116] By using the word "collectively," the Constitution allows for indirect ownership of land and not just outright agricultural land transfer. This is in recognition of the fact that land reform may become successful even if it is done through the medium of juridical entities composed of farmers.

Collective ownership is permitted in two (2) provisions of RA 6657. Its Sec. 29 allows workers' cooperatives or associations

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[115] WEBSTER'S *THIRD NEW INTERNATIONAL DICTIONARY UNABRIDGED* 444-445 (1993).

[116] *Id.* at 445.

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to collectively own the land, while the second paragraph of Sec. 31 allows corporations or associations to own agricultural land with the farmers becoming stockholders or members. Said provisions read:

> SEC. 29. *Farms owned or operated by corporations or other business associations*. — In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC.
>
> In general, lands shall be distributed directly to the individual worker-beneficiaries.
>
> In case it is not economically feasible and sound to divide the land, then **it shall be owned collectively by the worker beneficiaries who shall form a workers' cooperative or association** which will deal with the corporation or business association. x x x (Emphasis supplied.)
>
> SEC. 31. *Corporate Landowners*. — x x x
>
> x x x x x x x x x
>
> Upon certification by the DAR, **corporations** owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the **corporation** that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to **associations**, with respect to their equity or participation. x x x (Emphasis supplied.)

Clearly, workers' cooperatives or associations under Sec. 29 of RA 6657 and corporations or associations under the succeeding Sec. 31, as differentiated from individual farmers, are authorized vehicles for the collective ownership of agricultural land. Cooperatives can be registered with the Cooperative Development Authority and acquire legal personality of their own, while corporations are juridical persons under the Corporation Code. Thus, Sec. 31 is constitutional as it simply implements Sec. 4 of Art. XIII of the Constitution that land can be owned

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COLLECTIVELY by farmers. Even the framers of the l987 Constitution are in unison with respect to the two (2) modes of ownership of agricultural lands tilled by farmers—DIRECT and COLLECTIVE, thus:

MR. NOLLEDO. And when we talk of the phrase "to own **directly**," we mean the principle of **direct ownership by the tiller**?

MR. MONSOD. Yes.

MR. NOLLEDO. And when we talk of "**collectively**," we mean communal ownership, stewardship or State ownership?

MS. NIEVA. In this section, we conceive of cooperatives; **that is farmers' cooperatives owning the land**, not the State.

MR. NOLLEDO. And when we talk of "**collectively**," referring to farmers' cooperatives, do the farmers own specific areas of land where they only unite in their efforts?

MS. NIEVA. That is one way.

MR. NOLLEDO. Because I understand that there are two basic systems involved: the "moshave" type of agriculture and the "kibbutz." So are both contemplated in the report?

MR. TADEO. ***Ang dalawa kasing pamamaraan ng pagpapatupad ng tunay na reporma sa lupa ay ang pagmamay-ari ng lupa na hahatiin sa individual na pagmamay-ari — directly — at ang tinatawag na sama-samang gagawin ng mga magbubukid.*** *Tulad sa Negros, ang gusto ng mga magbubukid ay gawin nila itong "cooperative or collective farm." Ang ibig sabihin ay* ***sama-sama*** *nilang sasakahin.*

x x x x x x x x x

MR. TINGSON. x x x When we speak here of "to own directly or collectively the lands they till," is this land for the tillers rather than land for the landless? Before, we used to hear "land for the landless," but now the slogan is "land for the tillers." Is that right?

MR. TADEO. *Ang prinsipyong umiiral dito ay iyong land for the tillers.* ***Ang ibig sabihin ng "directly" ay tulad sa implementasyon sa rice and corn lands kung saan inaari na ng mga magsasaka ang lupang binubungkal nila. Ang ibig sabihin naman ng***

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***"collectively" ay sama-samang paggawa sa isang lupain o isang bukid**, katulad ng sitwasyon sa Negros.*[117] (Emphasis supplied.)

As Commissioner Tadeo explained, the farmers will work on the agricultural land "*sama-sama*" or collectively. Thus, the main requisite for collective ownership of land is collective or group work by farmers of the agricultural land. Irrespective of whether the landowner is a cooperative, association or corporation composed of farmers, as long as concerted group work by the farmers on the land is present, then it falls within the ambit of collective ownership scheme.

Likewise, Sec. 4, Art. XIII of the Constitution makes mention of a commitment on the part of the State to pursue, **by law**, an agrarian reform program founded on the policy of land for the landless, but subject to such priorities as Congress may prescribe, taking into account such abstract variable as "equity considerations." The textual reference to a law and Congress necessarily implies that the above constitutional provision is **not self-executory** and that legislation is needed to implement the urgently needed program of agrarian reform. And RA 6657 has been enacted precisely pursuant to and as a mechanism to carry out the constitutional directives. This piece of legislation, in fact, restates[118] the agrarian reform policy established in the aforementioned provision of the Constitution of promoting the welfare of landless farmers and farmworkers. RA 6657 thus defines "agrarian reform" as "the redistribution of lands … to farmers and regular farmworkers who are landless … to lift the economic status of the beneficiaries and **all other arrangements alternative to the physical redistribution of lands**, such as production or profit sharing, labor administration and the

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[117] Records of the Constitutional Commission, Vol. II, p. 678.

[118] Sec. 2, 3rd paragraph, of RA 6657 states: The agrarian reform program is founded on the right of farmers and regular farmers who are landless, to own land directly or collectively the lands they till or, in the case of other farmworkers to receive a share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to priorities and retention limits set forth in this Act x x x.

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distribution of shares of stock which will allow beneficiaries to receive a just share of the fruits of the lands they work."

With the view We take of this case, the stock distribution option devised under Sec. 31 of RA 6657 hews with the agrarian reform policy, as instrument of social justice under Sec. 4 of Article XIII of the Constitution. Albeit land ownership for the landless appears to be the dominant theme of that policy, We emphasize that Sec. 4, Article XIII of the Constitution, as couched, does not constrict Congress to passing an agrarian reform law planted on direct land transfer to and ownership by farmers and no other, or else the enactment suffers from the vice of unconstitutionality. If the intention were otherwise, the framers of the Constitution would have worded said section in a manner mandatory in character.

For this Court, Sec. 31 of RA 6657, with its direct and indirect transfer features, is not inconsistent with the State's commitment to farmers and farmworkers to advance their interests under the policy of social justice. The legislature, thru Sec. 31 of RA 6657, has chosen a modality for collective ownership by which the imperatives of social justice may, in its estimation, be approximated, if not achieved. The Court should be bound by such policy choice.

FARM contends that the farmers in the stock distribution scheme under Sec. 31 do not own the agricultural land but are merely given stock certificates. Thus, the farmers lose control over the land to the board of directors and executive officials of the corporation who actually manage the land. They conclude that such arrangement runs counter to the mandate of the Constitution that any agrarian reform must preserve the control over the land in the hands of the tiller.

This contention has no merit.

While it is true that the farmer is issued stock certificates and does not directly own the land, still, the Corporation Code is clear that the FWB becomes a stockholder who acquires an equitable interest in the assets of the corporation, which include the agricultural lands. It was explained that the "equitable interest

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of the shareholder in the property of the corporation is represented by the term stock, and the extent of his interest is described by the term shares. The expression shares of stock when qualified by words indicating number and ownership expresses the extent of the owner's interest in the corporate property."[119] A share of stock typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity and that its holder is not the owner of any part of the capital of the corporation.[120] However, the FWBs will ultimately own the agricultural lands owned by the corporation when the corporation is eventually dissolved and liquidated.

Anent the alleged loss of control of the farmers over the agricultural land operated and managed by the corporation, a reading of the second paragraph of Sec. 31 shows otherwise. Said provision provides that qualified beneficiaries have "the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets." The wording of the formula in the computation of the number of shares that can be bought by the farmers does not mean loss of control on the part of the farmers. It must be remembered that the determination of the percentage of the capital stock that can be bought by the farmers depends on the value of the agricultural land and the value of the total assets of the corporation.

There is, thus, nothing unconstitutional in the formula prescribed by RA 6657. The policy on agrarian reform is that control over the agricultural land must always be in the hands of the farmers. Then it falls on the shoulders of DAR and PARC to see to it the farmers should always own majority of the common shares entitled to elect the members of the board of directors to ensure that the farmers will have a clear majority in the board. Before

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[119] 11 Fletcher, Cyc. Corps. (1971 Rev. Vol.) Sec. 5083.

[120] *Mobilia Products, Inc. v. Umezawa*, G.R. Nos. 149357 and 149403, March 4, 2005.

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the SDP is approved, strict scrutiny of the proposed SDP must always be undertaken by the DAR and PARC, such that the value of the agricultural land contributed to the corporation must always be more than 50% of the total assets of the corporation to ensure that the majority of the members of the board of directors are composed of the farmers. The PARC composed of the President of the Philippines and cabinet secretaries must see to it that control over the board of directors rests with the farmers by rejecting the inclusion of non-agricultural assets which will yield the majority in the board of directors to non-farmers. Any deviation, however, by PARC or DAR from the correct application of the formula prescribed by the second paragraph of Sec. 31 of RA 6675 does not make said provision constitutionally infirm. Rather, it is the application of said provision that can be challenged. Ergo, Sec. 31 of RA 6657 does not trench on the constitutional policy of ensuring control by the farmers.

A view has been advanced that there can be no agrarian reform unless there is land distribution and that actual land distribution is the essential characteristic of a constitutional agrarian reform program. On the contrary, there have been so many instances where, despite actual land distribution, the implementation of agrarian reform was still unsuccessful. As a matter of fact, this Court may take judicial notice of cases where FWBs sold the awarded land even to non-qualified persons and in violation of the prohibition period provided under the law. This only proves to show that the mere fact that there is land distribution does not guarantee a successful implementation of agrarian reform.

As it were, the principle of "land to the tiller" and the old pastoral model of land ownership where non-human juridical persons, such as corporations, were prohibited from owning agricultural lands are no longer realistic under existing conditions. Practically, an individual farmer will often face greater disadvantages and difficulties than those who exercise ownership in a collective manner through a cooperative or corporation. The former is too often left to his own devices when faced with failing crops and bad weather, or compelled to obtain usurious loans in order to purchase costly fertilizers or farming equipment.

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The experiences learned from failed land reform activities in various parts of the country are lack of financing, lack of farm equipment, lack of fertilizers, lack of guaranteed buyers of produce, lack of farm-to-market roads, among others. Thus, at the end of the day, there is still no successful implementation of agrarian reform to speak of in such a case.

Although success is not guaranteed, a cooperative or a corporation stands in a better position to secure funding and competently maintain the agri-business than the individual farmer. While direct singular ownership over farmland does offer advantages, such as the ability to make quick decisions unhampered by interference from others, yet at best, these advantages only but offset the disadvantages that are often associated with such ownership arrangement. Thus, government must be flexible and creative in its mode of implementation to better its chances of success. One such option is collective ownership through juridical persons composed of farmers.

Aside from the fact that there appears to be no violation of the Constitution, the requirement that the instant case be capable of repetition yet evading review is also wanting. It would be speculative for this Court to assume that the legislature will enact another law providing for a similar stock option.

As a matter of sound practice, the Court will not interfere inordinately with the exercise by Congress of its official functions, the heavy presumption being that a law is the product of earnest studies by Congress to ensure that no constitutional prescription or concept is infringed.[121] Corollarily, courts will not pass upon questions of wisdom, expediency and justice of legislation or its provisions. Towards this end, all reasonable doubts should be resolved in favor of the constitutionality of a law and the validity of the acts and processes taken pursuant thereof.[122]

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[121] *Cawaling v. COMELEC*, G.R. No. 146319, October 26, 2001, 368 SCRA 453.

[122] *Basco v. PAGCOR*, G.R. No. 138298, November 29, 2000, 346 SCRA 485.

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Consequently, before a statute or its provisions duly challenged are voided, an unequivocal breach of, or a clear conflict with the Constitution, not merely a doubtful or argumentative one, must be demonstrated in such a manner as to leave no doubt in the mind of the Court. In other words, the grounds for nullity must be beyond reasonable doubt.[123] FARM has not presented compelling arguments to overcome the presumption of constitutionality of Sec. 31 of RA 6657.

The wisdom of Congress in allowing an SDP through a corporation as an alternative mode of implementing agrarian reform is not for judicial determination. Established jurisprudence tells us that it is not within the province of the Court to inquire into the wisdom of the law, for, indeed, We are bound by words of the statute.[124]

II.

The stage is now set for the determination of the propriety under the premises of the revocation or recall of HLI's SDP. Or to be more precise, the inquiry should be: whether or not PARC gravely abused its discretion in revoking or recalling the subject SDP and placing the *hacienda* under CARP's compulsory acquisition and distribution scheme.

The findings, analysis and recommendation of the DAR's Special Task Force contained and summarized in its Terminal Report provided the bases for the assailed PARC revocatory/ recalling Resolution. The findings may be grouped into two: (1) the SDP is contrary to either the policy on agrarian reform, Sec. 31 of RA 6657, or DAO 10; and (2) the alleged violation by HLI of the conditions/terms of the SDP. In more particular terms, the following are essentially the reasons underpinning PARC's revocatory or recall action:

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[123] *Angara v. Electoral Commission*, 63 Phil. 139 (1936); *Cawaling v. COMELEC*, *supra*, citing *Alvarez v. Guingona*, 252 SCRA 695 (1996).

[124] *National Food Authority v. Masda Security Agency, Inc.*, G.R. No. 163448, March 8, 2005.

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(1) Despite the lapse of 16 years from the approval of HLI's SDP, the lives of the FWBs have hardly improved and the promised increased income has not materialized;

(2) HLI has failed to keep Hacienda Luisita intact and unfragmented;

(3) The issuance of HLI shares of stock on the basis of number of hours worked—or the so-called "man days"—is grossly onerous to the FWBs, as HLI, in the guise of rotation, can unilaterally deny work to anyone. In elaboration of this ground, PARC's Resolution No. 2006-34-01, denying HLI's motion for reconsideration of Resolution No. 2005-32-01, stated that the man days criterion worked to dilute the entitlement of the original share beneficiaries;[125]

(4) The distribution/transfer of shares was not in accordance with the timelines fixed by law;

(5) HLI has failed to comply with its obligations to grant 3% of the gross sales every year as production-sharing benefit on top of the workers' salary; and

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[125] *Rollo*, p. 794. The PARC resolution also states:

HLI's implementation of the distribution of the mandatory minimum ratio of land-to-shares of stock to the ARBs [Agrarian Reform Beneficiaries] was based on man days, within its policy of no-work no-shares of stock, and not to equal number of shares depending upon their rightful share, as required in the rules, and therefore practically divested the ARBs, as to their qualification/entitlement, as ARBs at HLI's whims, to their disadvantage and prejudice in the form of diminution in the minimum ration of shares. Having increased x x x the number of workers (contractual), the **equity share of each permanent employee, as of 1989, naturally had to be, as in fact, reduced.**

Further x x x, HLI took it upon itself, or usurped, the duty or mandate of DAR to qualify the recipient ARBs and imposed its own criteria and discretion in the allocation of the mandatory minimum ratio of land-to share by basing the distribution on the number of days worked. Still worse, HLI made allocation to recipients who are not in the ARBs original masterlist as admittedly, **it distributed to about 11,955 stockholders of record 59,362,611 shares representing the second half of the total number of shares earmarked for distribution when in fact there were only 6,296 farm workers** or less, at the time when the land was placed under CARP under the SDP/SDO scheme. (Emphasis added.)

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(6) Several homelot awardees have yet to receive their individual titles.

Petitioner HLI claims having complied with, at least substantially, all its obligations under the SDP, as approved by PARC itself, and tags the reasons given for the revocation of the SDP as unfounded.

Public respondents, on the other hand, aver that the assailed resolution rests on solid grounds set forth in the Terminal Report, a position shared by AMBALA, which, in some pleadings, is represented by the same counsel as that appearing for the Supervisory Group.

FARM, for its part, posits the view that legal bases obtain for the revocation of the SDP, because it does not conform to Sec. 31 of RA 6657 and DAO 10. And training its sight on the resulting dilution of the equity of the FWBs appearing in HLI's masterlist, FARM would state that the SDP, as couched and implemented, spawned disparity when there should be none; parity when there should have been differentiation.[126]

The petition is not impressed with merit.

In the Terminal Report adopted by PARC, it is stated that the SDP violates the agrarian reform policy under Sec. 2 of RA 6657, as the said plan failed to enhance the dignity and improve the quality of lives of the FWBs through greater productivity of agricultural lands. We disagree.

Sec. 2 of RA 6657 states:

SECTION 2. *Declaration of Principles and Policies*. — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farm workers will receive the highest consideration to promote social justice and to move the nation towards sound rural development and industrialization, and the establishment of owner cultivatorship of economic-sized farms as the basis of Philippine agriculture.

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[126] Memorandum of Renato Lalic, *et al.*, p. 14.

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To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farm workers **with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.**

The agrarian reform program is founded on the right of farmers and regular farm workers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a share of the fruits thereof. To this end, the State shall encourage the just distribution of all agricultural lands, subject to the priorities and retention limits set forth in this Act, having taken into account ecological, developmental, and equity considerations, and subject to the payment of just compensation. The State shall respect the right of small landowners and shall provide incentives for voluntary land-sharing. (Emphasis supplied.)

Paragraph 2 of the above-quoted provision specifically mentions that "a more equitable distribution and ownership of land x x x shall be undertaken to provide farmers and farm workers with the **opportunity** to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands." Of note is the term "opportunity" which is defined as a favorable chance or opening offered by circumstances.[127] Considering this, by no stretch of imagination can said provision be construed as a guarantee in improving the lives of the FWBs. At best, it merely provides for a possibility or favorable chance of uplifting the economic status of the FWBs, which may or may not be attained.

Pertinently, improving the economic status of the FWBs is neither among the legal obligations of HLI under the SDP nor an imperative imposition by RA 6657 and DAO 10, a violation of which would justify discarding the stock distribution option. Nothing in that option agreement, law or department order indicates otherwise.

Significantly, HLI draws particular attention to its having paid its FWBs, during the regime of the SDP (1989-2005), some

[127] *Little Oxford Dictionary* 442 (7th ed.).

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PhP 3 billion by way of salaries/wages and higher benefits exclusive of free hospital and medical benefits to their immediate family. And attached as Annex "G" to HLI's Memorandum is the certified true report of the finance manager of Jose Cojuangco & Sons Organizations-Tarlac Operations, captioned as "*HACIENDA LUISITA, INC. Salaries, Benefits and Credit Privileges (in Thousand Pesos) Since the Stock Option was Approved by PARC/CARP*," detailing what HLI gave their workers from 1989 to 2005. The sum total, as added up by the Court, yields the following numbers: Total Direct Cash Out (Salaries/Wages & Cash Benefits) = PhP 2,927,848; Total Non-Direct Cash Out (Hospital/Medical Benefits) = PhP 303,040. The cash out figures, as stated in the report, include the cost of homelots; the PhP 150 million or so representing 3% of the gross produce of the *hacienda*; and the PhP 37.5 million representing 3% from the proceeds of the sale of the 500-hectare converted lands. While not included in the report, HLI manifests having given the FWBs 3% of the PhP 80 million paid for the 80 hectares of land traversed by the SCTEX.[128] On top of these, it is worth remembering that the shares of stocks were given by HLI to the FWBs for free. Verily, the FWBs have benefited from the SDP.

To address urgings that the FWBs be allowed to disengage from the SDP as HLI has not anyway earned profits through the years, it cannot be over-emphasized that, as a matter of common business sense, no corporation could guarantee a profitable run all the time. As has been suggested, one of the key features of an SDP of a corporate landowner is the likelihood of the corporate vehicle not earning, or, worse still, losing money.[129]

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[128] *Rollo*, p. 3676.

[129] The SGV & Co.'s Independent Auditors Report on HLI for years ended 2009, 2008 and 2007 contains the following entries: "[T]he Company has suffered recurring losses from operations and has substantial negative working capital deficiency. The Company has continued to have no operations and experienced financial difficulties as a result of a strike staged by the labor union on November 6, 2004." *Rollo*, p. 3779, Annex "I" of HLI's Memorandum.

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The Court is fully aware that one of the criteria under DAO 10 for the PARC to consider the advisability of approving a stock distribution plan is the likelihood that the plan "**would result in increased income and greater benefits to [qualified beneficiaries] than if the lands were divided and distributed to them individually**."[130] But as aptly noted during the oral arguments, DAO 10 ought to have not, as it cannot, actually exact assurance of success on something that is subject to the will of man, the forces of nature or the inherent risky nature of business.[131] Just like in actual land distribution, an SDP cannot guarantee, as indeed the SDOA does not guarantee, a comfortable life for the FWBs. The Court can take judicial notice of the fact that there were many instances wherein after a farmworker beneficiary has been awarded with an agricultural land, he just subsequently sells it and is eventually left with nothing in the end.

In all then, the onerous condition of the FWBs' economic status, their life of hardship, if that really be the case, can hardly be attributed to HLI and its SDP and provide a valid ground for the plan's revocation.

Neither does HLI's SDP, whence the DAR-attested SDOA/MOA is based, infringe Sec. 31 of RA 6657, albeit public respondents erroneously submit otherwise.

The provisions of the first paragraph of the adverted Sec. 31 are without relevance to the issue on the propriety of the assailed order revoking HLI's SDP, for the paragraph deals with the transfer of agricultural lands to the government, as a mode of CARP compliance, thus:

> SEC. 31. *Corporate Landowners.* — Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries under such terms and conditions, consistent with this Act, as they may agree, subject to confirmation by the DAR.

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[130] Sec. 5(2).

[131] TSN, August 24, 2010, p. 125.

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The second and third paragraphs, with their sub-paragraphs, of Sec. 31 provide as follows:

> Upon certification by the DAR, corporations owning agricultural lands **may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. x x x
>
> Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: Provided, That the following conditions are complied with:
>
> (a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits, the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;
>
> (b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;
>
> (c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and
>
> (d) Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

The mandatory minimum ratio of land-to-shares of stock supposed to be distributed or allocated to qualified beneficiaries, adverting to what Sec. 31 of RA 6657 refers to as that "**proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**" had been observed.

Paragraph one (1) of the SDOA, which was based on the SDP, conforms to Sec. 31 of RA 6657. The stipulation reads:

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1. The percentage of the value of the agricultural land of Hacienda Luisita (₱196,630,000.00) in relation to the total assets (₱590,554,220.00) transferred and conveyed to the SECOND PARTY is 33.296% that, under the law, is the proportion of the outstanding capital stock of the SECOND PARTY, which is ₱355,531,462.00 or 355,531,462 shares with a par value of ₱1.00 per share, that has to be distributed to the THIRD PARTY under the stock distribution plan, the said 33.296% thereof being ₱118,391,976.85 or 118,391,976.85 shares.

The appraised value of the agricultural land is PhP 196,630,000 and of HLI's other assets is PhP 393,924,220. The total value of HLI's assets is, therefore, PhP 590,554,220.[132] The percentage of the value of the agricultural lands (PhP 196,630,000) in relation to the total assets (PhP 590,554,220) is 33.296%, which represents the stockholdings of the 6,296 original qualified farmworker-beneficiaries (FWBs) in HLI. The total number of shares to be distributed to said qualified FWBs is 118,391,976.85 HLI shares. This was arrived at by getting 33.296% of the 355,531,462 shares which is the outstanding capital stock of HLI with a value of PhP 355,531,462. Thus, if we divide the 118,391,976.85 HLI shares by 6,296 FWBs, then each FWB is entitled to 18,804.32 HLI shares. These shares under the SDP are to be given to FWBs for free.

The Court finds that the determination of the shares to be distributed to the 6,296 FWBs strictly adheres to the formula prescribed by Sec. 31(b) of RA 6657.

Anent the requirement under Sec. 31(b) of the third paragraph, that the FWBs shall be assured of at least one (1) representative in the board of directors or in a management or executive committee irrespective of the value of the equity of the FWBs in HLI, the Court finds that the SDOA contained provisions making certain the FWBs' representation in HLI's governing board, thus:

5. Even if only a part or fraction of the shares earmarked for distribution will have been acquired from the FIRST PARTY and

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[132] MOA, 4th Whereas clause.

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distributed to the THIRD PARTY, FIRST PARTY shall execute at the beginning of each fiscal year an irrevocable proxy, valid and effective for one (1) year, in favor of the farmworkers appearing as shareholders of the SECOND PARTY at the start of said year which will empower the THIRD PARTY or their representative to vote in stockholders' and board of directors' meetings of the SECOND PARTY convened during the year the entire 33.296% of the outstanding capital stock of the SECOND PARTY earmarked for distribution and thus be able to gain such number of seats in the board of directors of the SECOND PARTY that the whole 33.296% of the shares subject to distribution will be entitled to.

Also, no allegations have been made against HLI restricting the inspection of its books by accountants chosen by the FWBs; hence, the assumption may be made that there has been no violation of the statutory prescription under sub-paragraph (a) on the auditing of HLI's accounts.

Public respondents, however, submit that the distribution of the mandatory minimum ratio of land-to-shares of stock, referring to the 118,391,976.85 shares with par value of PhP 1 each, should have been made in full within two (2) years from the approval of RA 6657, in line with the last paragraph of Sec. 31 of said law.[133]

Public respondents' submission is palpably erroneous. We have closely examined the last paragraph alluded to, with particular focus on the two-year period mentioned, and nothing in it remotely supports the public respondents' posture. In its pertinent part, said Sec. 31 provides:

SEC. 31. Corporate Landowners x x x

If within **two (2) years** from the approval of this Act, the [voluntary] land or stock transfer envisioned above is not made or realized **or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.** (Word in bracket and emphasis added.)

Properly viewed, the words "**two (2) years**" clearly refer to the period within which the corporate landowner, to avoid land

[133] Memorandum of public respondents, p. 41.

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transfer as a mode of CARP coverage under RA 6657, is to avail of the stock distribution option or to have the SDP approved. The HLI secured approval of its SDP in November 1989, well within the two-year period reckoned from June 1988 when RA 6657 took effect.

Having hurdled the alleged breach of the agrarian reform policy under Sec. 2 of RA 6657 as well as the statutory issues, We shall now delve into what PARC and respondents deem to be other instances of violation of DAO 10 and the SDP.

On the Conversion of Lands

Contrary to the almost parallel stance of the respondents, keeping Hacienda Luisita unfragmented is also not among the imperative impositions by the SDP, RA 6657, and DAO 10.

The Terminal Report states that the proposed distribution plan submitted in 1989 to the PARC effectively assured the intended stock beneficiaries that the physical integrity of the farm shall remain inviolate. Accordingly, the Terminal Report and the PARC-assailed resolution would take HLI to task for securing approval of the conversion to non-agricultural uses of 500 hectares of the *hacienda*. In not too many words, the Report and the resolution view the conversion as an infringement of Sec. 5(a) of DAO 10 which reads: "a. that the continued operation of the corporation with its agricultural land intact and unfragmented is viable with potential for growth and increased profitability."

The PARC is wrong.

In the first place, Sec. 5(a)—just like the succeeding Sec. 5(b) of DAO 10 on increased income and greater benefits to qualified beneficiaries—is but one of the stated criteria to guide PARC in deciding on whether or not to accept an SDP. Said Sec. 5(a) does not exact from the corporate landowner-applicant the undertaking to keep the farm intact and unfragmented *ad infinitum*. And there is logic to HLI's stated observation that the key phrase in the provision of Sec. 5(a) is "viability of corporate operations": "[w]hat is thus required is not the agricultural land remaining intact x x x but the viability of the

corporate operations with its agricultural land being intact and unfragmented. Corporate operation may be viable even if the corporate agricultural land does not remain intact or [un]fragmented."[134]

It is, of course, anti-climactic to mention that DAR viewed the conversion as not violative of any issuance, let alone undermining the viability of Hacienda Luisita's operation, as the DAR Secretary approved the land conversion applied for and its disposition via his Conversion Order dated August 14, 1996 pursuant to Sec. 65 of RA 6657 which reads:

> Sec. 65. *Conversion of Lands*. — After the lapse of five years from its award when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR upon application of the beneficiary or landowner with due notice to the affected parties, and subject to existing laws, may authorize the x x x conversion of the land and its dispositions. x x x

On the 3% Production Share

On the matter of the alleged failure of HLI to comply with sharing the 3% of the gross production sales of the *hacienda* and pay dividends from profit, the entries in its financial books tend to indicate compliance by HLI of the profit-sharing equivalent to 3% of the gross sales from the production of the agricultural land on top of (a) the salaries and wages due FWBs as employees of the company and (b) the 3% of the gross selling price of the converted land and that portion used for the SCTEX. A plausible evidence of compliance or non-compliance, as the case may be, could be the books of account of HLI. Evidently, the cry of some groups of not having received their share from the gross production sales has not adequately been validated on the ground by the Special Task Force.

Indeed, factual findings of administrative agencies are conclusive when supported by substantial evidence and are accorded due

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[134] HLI Consolidated Reply and Opposition, p. 65.

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respect and weight, especially when they are affirmed by the CA.[135] However, such rule is not absolute. One such exception is when the findings of an administrative agency are conclusions without citation of specific evidence on which they are based,[136] such as in this particular instance. As culled from its Terminal Report, it would appear that the Special Task Force rejected HLI's claim of compliance on the basis of this ratiocination:

• The Task Force position**:** Though, allegedly, the Supervisory Group receives the 3% gross production share and that others alleged that they received 30 million pesos still others maintain that they have not received anything yet. Item No. 4 of the MOA is clear and must be followed. There is a distinction between the **total gross sales** from the **production of the land** and the **proceeds** from the **sale of the land**. The former refers to the fruits/yield of the agricultural land while the latter is the land itself. The phrase "the beneficiaries are entitled every year to an amount approximately equivalent to 3% would only be feasible if the subject is the produce since there is at least one harvest per year, while such is not the case in the sale of the agricultural land. This negates then the claim of HLI that, all that the FWBs can be entitled to, if any, is only 3% of the purchase price of the converted land.

• Besides, the ***Conversion Order*** dated 14 August 1996 provides that "*the benefits, wages and the like, presently received by the FWBs shall not in any way be reduced or adversely affected.* ***Three percent of the gross selling price of the sale of the converted land shall be awarded to the beneficiaries of the SDO***." The 3% gross production share then is different from the 3% proceeds of the sale of the converted land and, with more reason, the 33% share being claimed by the FWBs as part owners of the Hacienda, should have been given the FWBs, as stockholders, and to which they could have been entitled if only the land were acquired and redistributed to them under the CARP.

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[135] *Herida v. F&C Pawnshop and Jewelry Store*, G.R. No. 172601, April 16, 2009, 585 SCRA 395, 401.

[136] *Bascos, Jr. v. Taganahan*, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 674-675.

• The FWBs do not receive any other benefits under the MOA except the aforementioned [(*viz*: shares of stocks (partial), 3% gross production sale (not all) and homelots (not all)].

Judging from the above statements, the Special Task Force is at best silent on whether HLI has failed to comply with the 3% production-sharing obligation or the 3% of the gross selling price of the converted land and the SCTEX lot. In fact, it admits that the FWBs, though not all, have received their share of the gross production sales and in the sale of the lot to SCTEX. At most, then, HLI had complied substantially with this SDP undertaking and the conversion order. To be sure, this slight breach would not justify the setting to naught by PARC of the approval action of the earlier PARC. Even in contract law, rescission, predicated on violation of reciprocity, will not be permitted for a slight or casual breach of contract; rescission may be had only for such breaches that are substantial and fundamental as to defeat the object of the parties in making the agreement.[137]

Despite the foregoing findings, the revocation of the approval of the SDP is not without basis as shown below.

On Titles to Homelots

Under RA 6657, the distribution of homelots is required only for corporations or business associations owning or operating farms which opted for land distribution. Sec. 30 of RA 6657 states:

SEC. 30. *Homelots and Farmlots for Members of Cooperatives.* — The individual members of the cooperatives or corporations mentioned in the preceding section shall be provided with homelots and small farmlots for their family use, to be taken from the land owned by the cooperative or corporation.

The "preceding section" referred to in the above-quoted provision is as follows:

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[137] *Cannu v. Galang*, G.R. No. 139523, May 26, 2005, 459 SCRA 80, 93-94; *Ang v. Court of Appeals*, G.R. No. 80058, February 13, 1989, 170 SCRA 286.

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SEC. 29. *Farms Owned or Operated by Corporations or Other Business Associations.* — In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC.

In general, lands shall be distributed directly to the individual worker-beneficiaries.

In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association. Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association, any agreement existing at the time this Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation or business association.

Noticeably, the foregoing provisions do not make reference to corporations which opted for stock distribution under Sec. 31 of RA 6657. Concomitantly, said corporations are not obliged to provide for it except by stipulation, as in this case.

Under the SDP, HLI undertook to "subdivide and allocate for free and without charge among the qualified family-beneficiaries x x x residential or homelots of not more than 240 sq. m. each, with each family beneficiary being assured of receiving and owning a homelot in the barrio or *barangay* where it actually resides," "within a reasonable time."

More than sixteen (16) years have elapsed from the time the SDP was approved by PARC, and yet, it is still the contention of the FWBs that not all was given the 240-square meter homelots and, of those who were already given, some still do not have the corresponding titles.

During the oral arguments, HLI was afforded the chance to refute the foregoing allegation by submitting proof that the FWBs were already given the said homelots:

Justice Velasco: x x x There is also an allegation that the farmer beneficiaries, the qualified family beneficiaries were not given the

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240 square meters each. So, can you also [prove] that the qualified family beneficiaries were already provided the 240 square meter homelots.

Atty. Asuncion: We will, your Honor please.[138]

Other than the financial report, however, no other substantial proof showing that all the qualified beneficiaries have received homelots was submitted by HLI. Hence, this Court is constrained to rule that HLI has not yet fully complied with its undertaking to distribute homelots to the FWBs under the SDP.

On "Man Days" and the Mechanics of Stock Distribution

In our review and analysis of par. 3 of the SDOA on the mechanics and timelines of stock distribution, We find that it **violates** two (2) provisions of DAO 10. Par. 3 of the SDOA states:

3. At the end of each fiscal year, for a period of 30 years, the SECOND PARTY [HLI] shall arrange with the FIRST PARTY [TDC] the acquisition and distribution to the THIRD PARTY [FWBs] on the basis of number of days worked and at no cost to them of one-thirtieth (1/30) of 118,391,976.85 shares of the capital stock of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,976.85 shares shall have been completely acquired and distributed to the THIRD PARTY.

Based on the above-quoted provision, the distribution of the shares of stock to the FWBs, albeit not entailing a cash out from them, is contingent on the number of "man days," that is, the number of days that the FWBs have worked during the year. This formula deviates from Sec. 1 of DAO 10, which decrees the distribution of equal number of shares to the FWBs as the minimum ratio of shares of stock for purposes of compliance with Sec. 31 of RA 6657. As stated in Sec. 4 of DAO 10:

Section 4. *Stock Distribution Plan.* — The [SDP] submitted by the corporate landowner-applicant shall provide for **the distribution**

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[138] TSN, August 18, 2010, p. 58.

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of an equal number of shares of the same class and value, with the same rights and features as all other shares, to each of the qualified beneficiaries. This distribution plan in all cases, shall be at least the **minimum ratio** for purposes of compliance with Section 31 of R.A. No. 6657.

On top of the minimum ratio provided under Section 3 of this Implementing Guideline, the corporate landowner-applicant may adopt **additional stock distribution schemes taking into account factors such as rank, seniority, salary, position and other circumstances which may be deemed desirable as a matter of sound company policy**. (Emphasis supplied.)

The above proviso gives two (2) sets or categories of shares of stock which a qualified beneficiary can acquire from the corporation under the SDP. The first pertains, as earlier explained, to the mandatory minimum ratio of shares of stock to be distributed to the FWBs in compliance with Sec. 31 of RA 6657. This minimum ratio contemplates of that "**proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets**."[139] It is this set of shares of stock which, in line with Sec. 4 of DAO 10, is supposed to be allocated "for the distribution of an equal number of shares of stock of the same class and value, with the same rights and features as all other shares, to each of the qualified beneficiaries."

On the other hand, the second set or category of shares partakes of a gratuitous extra grant, meaning that this set or category constitutes an augmentation share/s that the corporate landowner may give under an additional stock distribution scheme, taking into account such variables as rank, seniority, salary, position and like factors which the management, in the exercise of its sound discretion, may deem desirable.[140]

Before anything else, it should be stressed that, at the time PARC approved HLI's SDP, HLI recognized **6,296** individuals as qualified FWBs. And under the 30-year stock distribution

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[139] RA 6657, Sec. 31.

[140] DAO 10, s. 1988, Sec. 1.

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program envisaged under the plan, FWBs who came in after 1989, new FWBs in fine, may be accommodated, as they appear to have in fact been accommodated as evidenced by their receipt of HLI shares.

Now then, by providing that the number of shares of the original 1989 FWBs shall depend on the number of "man days," HLI violated the afore-quoted rule on stock distribution and effectively deprived the FWBs of equal shares of stock in the corporation, for, in net effect, these 6,296 qualified FWBs, who theoretically had given up their rights to the land that could have been distributed to them, suffered a dilution of their due share entitlement. As has been observed during the oral arguments, HLI has chosen to use the shares earmarked for farmworkers as reward system chips to water down the shares of the original 6,296 FWBs.[141] Particularly:

Justice Abad: If the SDOA did not take place, the other thing that would have happened is that there would be CARP?

Atty. Dela Merced: Yes, Your Honor.

Justice Abad: That's the only point I want to know x x x. Now, but they chose to enter SDOA instead of placing the land under CARP. And for that reason those who would have gotten their shares of the land actually gave up their rights to this land in place of the shares of the stock, is that correct?

Atty. Dela Merced: It would be that way, Your Honor.

Justice Abad: Right now, also the government, in a way, gave up its right to own the land because that way the government takes own [sic] the land and distribute it to the farmers and pay for the land, is that correct?

Atty. Dela Merced: Yes, Your Honor.

Justice Abad: And then you gave thirty-three percent (33%) of the shares of HLI to the farmers at that time that numbered x x x those who signed five thousand four hundred ninety-eight (5,498) beneficiaries, is that correct?

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[141] TSN, August 18, 2010, p. 106.

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Atty. Dela Merced: Yes, Your Honor.

Justice Abad: But later on, after assigning them their shares, some workers came in from 1989, 1990, 1991, 1992 and the rest of the years that you gave additional shares who were not in the original list of owners?

Atty. Dela Merced: Yes, Your Honor.

Justice Abad: Did those new workers give up any right that would have belong to them in 1989 when the land was supposed to have been placed under CARP?

Atty. Dela Merced: If you are talking or referring… (interrupted)

Justice Abad: None! You tell me. None. They gave up no rights to land?

Atty. Dela Merced: They did not do the same thing as we did in 1989, Your Honor.

Justice Abad: No, if they were not workers in 1989 what land did they give up? None, if they become workers later on.

Atty. Dela Merced: None, Your Honor, I was referring, Your Honor, to the original… (interrupted)

Justice Abad: So why is it that the rights of those who gave up their lands would be diluted, because the company has chosen to use the shares as reward system for new workers who come in? It is not that the new workers, in effect, become just workers of the corporation whose stockholders were already fixed. The TADECO who has shares there about sixty-six percent (66%) and the five thousand four hundred ninety-eight (5,498) farmers at the time of the SDOA? Explain to me. Why, why will you x x x what right or where did you get that right to use this shares, to water down the shares of those who should have been benefited, and to use it as a reward system decided by the company?[142]

From the above discourse, it is clear as day that the original 6,296 FWBs, who were qualified beneficiaries at the time of the approval of the SDP, suffered from watering down of shares. As determined earlier, each original FWB is entitled to 18,804.32 HLI shares. The original FWBs got less than the guaranteed

[142] *Id.* at 103-106.

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18,804.32 HLI shares per beneficiary, because the acquisition and distribution of the HLI shares were based on "man days" or "number of days worked" by the FWB in a year's time. As explained by HLI, a beneficiary needs to work for at least 37 days in a fiscal year before he or she becomes entitled to HLI shares. If it falls below 37 days, the FWB, unfortunately, does not get any share at year end. The number of HLI shares distributed varies depending on the number of days the FWBs were allowed to work in one year. Worse, HLI hired farmworkers in addition to the original 6,296 FWBs, such that, as indicated in the Compliance dated August 2, 2010 submitted by HLI to the Court, the total number of farmworkers of HLI as of said date stood at 10,502. All these farmworkers, which include the original 6,296 FWBs, were given shares out of the 118,931,976.85 HLI shares representing the 33.296% of the total outstanding capital stock of HLI. Clearly, the minimum individual allocation of each original FWB of 18,804.32 shares was diluted as a result of the use of "man days" and the hiring of additional farmworkers.

Going into another but related matter, par. 3 of the SDOA expressly providing for a 30-year timeframe for HLI-to-FWBs stock transfer is an arrangement contrary to what Sec. 11 of DAO 10 prescribes. Said Sec. 11 provides for the implementation of the approved stock distribution plan within three (3) months from receipt by the corporate landowner of the approval of the plan by PARC. In fact, based on the said provision, the transfer of the shares of stock in the names of the qualified FWBs should be recorded in the stock and transfer books and must be submitted to the SEC within sixty (60) days from implementation. As stated:

> Section 11. *Implementation/Monitoring of Plan.* — The approved stock distribution plan shall be **implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC**, and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in stock and transfer books and **submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the**

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said implementation of the stock distribution plan. (Emphasis supplied.)

It is evident from the foregoing provision that the implementation, that is, the distribution of the shares of stock to the FWBs, must be made within three (3) months from receipt by HLI of the approval of the stock distribution plan by PARC. While neither of the clashing parties has made a compelling case of the thrust of this provision, the Court is of the view and so holds that the intent is to compel the corporate landowner to complete, not merely initiate, the transfer process of shares within that three-month timeframe. Reinforcing this conclusion is the 60-day stock transfer recording (with the SEC) requirement reckoned from the implementation of the SDP.

To the Court, there is a purpose, which is at once discernible as it is practical, for the three-month threshold. Remove this timeline and the corporate landowner can veritably evade compliance with agrarian reform by simply deferring to absurd limits the implementation of the stock distribution scheme.

The argument is urged that the thirty (30)-year distribution program is justified by the fact that, under Sec. 26 of RA 6657, payment by beneficiaries of land distribution under CARP shall be made in thirty (30) annual amortizations. To HLI, said section provides a justifying dimension to its 30-year stock distribution program.

HLI's reliance on Sec. 26 of RA 6657, quoted in part below, is obviously misplaced as the said provision clearly deals with land distribution.

SEC. 26. *Payment by Beneficiaries*. — Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in thirty (30) annual amortizations x x x.

Then, too, the ones obliged to pay the LBP under the said provision are the beneficiaries. On the other hand, in the instant case, aside from the fact that what is involved is stock distribution, it is the corporate landowner who has the obligation to distribute the shares of stock among the FWBs.

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Evidently, the land transfer beneficiaries are given thirty (30) years within which to pay the cost of the land thus awarded them to make it less cumbersome for them to pay the government. To be sure, the reason underpinning the 30-year accommodation does not apply to corporate landowners in distributing shares of stock to the qualified beneficiaries, as the shares may be issued in a much shorter period of time.

Taking into account the above discussion, the revocation of the SDP by PARC should be upheld for violating DAO 10. It bears stressing that under Sec. 49 of RA 6657, the PARC and the DAR have the power to issue rules and regulations, substantive or procedural. Being a product of such rule-making power, DAO 10 has the force and effect of law and must be duly complied with.[143] The PARC is, therefore, correct in revoking the SDP. Consequently, the PARC Resolution No. 89-12-2 dated November 21, l989 approving the HLI's SDP is nullified and voided.

III.

We now resolve the petitions-in-intervention which, at bottom, uniformly pray for the exclusion from the coverage of the assailed PARC resolution those portions of the converted land within Hacienda Luisita which RCBC and LIPCO acquired by purchase.

Both contend that they are innocent purchasers for value of portions of the converted farm land. Thus, their plea for the exclusion of that portion from PARC Resolution 2005-32-01, as implemented by a DAR-issued Notice of Coverage dated January 2, 2006, which called for mandatory CARP acquisition coverage of lands subject of the SDP.

To restate the antecedents, after the conversion of the 500 hectares of land in Hacienda Luisita, HLI transferred the 300 hectares to Centennary, while ceding the remaining 200-hectare portion to LRC. Subsequently, LIPCO purchased the entire three hundred (300) hectares of land from Centennary for the purpose of developing the land into an industrial complex.[144]

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[143] See *Abakada Guro Party List v. Purisima*, G.R. No. 166715, August 14, 2008, 562 SCRA 251, 288-289.

[144] *Rollo*, p. 1362.

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Accordingly, the TCT in Centennary's name was canceled and a new one issued in LIPCO's name. Thereafter, said land was subdivided into two (2) more parcels of land. Later on, LIPCO transferred about 184 hectares to RCBC by way of *dacion en pago*, by virtue of which TCTs in the name of RCBC were subsequently issued.

Under Sec. 44 of PD 1529 or the *Property Registration Decree*, "every registered owner receiving a certificate of title in pursuance of a decree of registration and every subsequent purchaser of registered land taking a certificate of title for value and in *good faith* shall hold the same free from all encumbrances except those noted on the certificate and enumerated therein."[145]

It is settled doctrine that one who deals with property registered under the Torrens system need not go beyond the four corners of, but can rely on what appears on, the title. He is charged with notice only of such burdens and claims as are annotated on the title. This principle admits of certain exceptions, such as when the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry, or when the purchaser has knowledge of a defect or the lack of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.[146] A higher level of care and diligence is of course expected from banks, their business being impressed with public interest.[147]

Millena v. Court of Appeals describes a purchaser in good faith in this wise:

x x x **A purchaser in good faith is one who buys property of another, without notice that some other person has a right to, or interest in, such property at the time of such purchase, or before**

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[145] *Lu v. Manipon*, G.R. No. 147072, May 7, 2002, 381 SCRA 788, 796.

[146] *Sandoval v. Court of Appeals*, G.R. No. 106657, August 1, 1996, 260 SCRA 283, 295.

[147] *Cavite Development Bank v. Lim*, G.R. No. 131679, February 1, 2000, 324 SCRA 346, 359.

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he has notice of the claim or interest of some other persons in the property. Good faith, or the lack of it, is in the final analysis a question of intention; but in ascertaining the intention by which one is actuated on a given occasion, we are necessarily controlled by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined. Truly, good faith is not a visible, tangible fact that can be seen or touched, but rather a state or condition of mind which can only be judged by actual or fancied tokens or signs. Otherwise stated, good faith x x x refers to the state of mind which is manifested by the acts of the individual concerned.[148] (Emphasis supplied.)

In fine, there are two (2) requirements before one may be considered a purchaser in good faith, namely: (1) that the purchaser buys the property of another without notice that some other person has a right to or interest in such property; and (2) that the purchaser pays a full and fair price for the property at the time of such purchase or before he or she has notice of the claim of another.

It can rightfully be said that both LIPCO and RCBC are—based on the above requirements and with respect to the adverted transactions of the converted land in question—purchasers in good faith for value entitled to the benefits arising from such status.

First, at the time LIPCO purchased the entire three hundred (300) hectares of industrial land, there was no notice of any supposed defect in the title of its transferor, Centennary, or that any other person has a right to or interest in such property. In fact, at the time LIPCO acquired said parcels of land, only the following annotations appeared on the TCT in the name of Centennary: the Secretary's Certificate in favor of Teresita Lopa, the Secretary's Certificate in favor of Shintaro Murai, and the conversion of the property from agricultural to industrial and residential use.[149]

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[148] G.R. No. 127797, January 31, 2000, 324 SCRA 126, 136-137.

[149] *Rollo*, p. 1568.

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The same is true with respect to RCBC. At the time it acquired portions of Hacienda Luisita, only the following general annotations appeared on the TCTs of LIPCO: the Deed of Restrictions, limiting its use solely as an industrial estate; the Secretary's Certificate in favor of Koji Komai and Kyosuke Hori; and the Real Estate Mortgage in favor of RCBC to guarantee the payment of PhP 300 million.

It cannot be claimed that RCBC and LIPCO acted in bad faith in acquiring the lots that were previously covered by the SDP. Good faith "consists in the possessor's belief that the person from whom he received it was the owner of the same and could convey his title. Good faith requires a well-founded belief that the person from whom title was received was himself the owner of the land, with the right to convey it. There is good faith where there is an honest intention to abstain from taking any unconscientious advantage from another."[150] It is the opposite of fraud.

To be sure, intervenor RCBC and LIPCO knew that the lots they bought were subjected to CARP coverage by means of a stock distribution plan, as the DAR conversion order was annotated at the back of the titles of the lots they acquired. However, they are of the honest belief that the subject lots were validly converted to commercial or industrial purposes and for which said lots were taken out of the CARP coverage subject of PARC Resolution No. 89-12-2 and, hence, can be legally and validly acquired by them. After all, Sec. 65 of RA 6657 explicitly allows conversion and disposition of agricultural lands previously covered by CARP land acquisition "after the lapse of five (5) years from its award when the land ceases to be economically feasible and sound for agricultural purposes or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes." Moreover, DAR notified all the affected parties, more particularly the FWBs, and gave them the opportunity to

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[150] *Duran v. Intermediate Appellate Court*, G.R. No. 64159, September 10, 1985, 138 SCRA 489, 494.

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comment or oppose the proposed conversion. DAR, after going through the necessary processes, granted the conversion of 500 hectares of Hacienda Luisita pursuant to its primary jurisdiction under Sec. 50 of RA 6657 to determine and adjudicate agrarian reform matters and its original exclusive jurisdiction over all matters involving the implementation of agrarian reform. The DAR conversion order became final and executory after none of the FWBs interposed an appeal to the CA. In this factual setting, RCBC and LIPCO purchased the lots in question on their honest and well-founded belief that the previous registered owners could legally sell and convey the lots though these were previously subject of CARP coverage. Ergo, RCBC and LIPCO acted in good faith in acquiring the subject lots.

And *second*, both LIPCO and RCBC purchased portions of Hacienda Luisita for value. Undeniably, LIPCO acquired 300 hectares of land from Centennary for the amount of PhP 750 million pursuant to a Deed of Sale dated July 30, 1998.[151] On the other hand, in a Deed of Absolute Assignment dated November 25, 2004, LIPCO conveyed portions of Hacienda Luisita in favor of RCBC by way of *dacion en pago* to pay for a loan of PhP 431,695,732.10.

As *bona fide* purchasers for value, both LIPCO and RCBC have acquired rights which cannot just be disregarded by DAR, PARC or even by this Court. As held in *Spouses Chua v. Soriano*:

> With the property in question having already passed to the hands of purchasers in good faith, it is now of no moment that some irregularity attended the issuance of the SPA, consistent with our pronouncement in *Heirs of Spouses Benito Gavino and Juana Euste v. Court of Appeals,* to wit:
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> > x x x the general rule that the direct result of a previous void contract cannot be valid, is inapplicable in this case as it will directly contravene the Torrens system of registration. **Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property, the court cannot disregard such rights and**

[151] *Rollo,* pp. 1499-1509.

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> **order the cancellation of the certificate.** The effect of such outright cancellation will be to impair public confidence in the certificate of title. The sanctity of the Torrens system must be preserved; otherwise, everyone dealing with the property registered under the system will have to inquire in every instance as to whether the title had been regularly or irregularly issued, contrary to the evident purpose of the law.
>
> **Being purchasers in good faith, the Chuas already acquired valid title to the property. A purchaser in good faith holds an indefeasible title to the property and he is entitled to the protection of the law.**[152] x x x (Emphasis supplied.)

To be sure, the practicalities of the situation have to a point influenced Our disposition on the fate of RCBC and LIPCO. After all, the Court, to borrow from *Association of Small Landowners in the Philippines, Inc.*,[153] is not a "cloistered institution removed" from the realities on the ground. To note, the approval and issuances of both the national and local governments showing that certain portions of Hacienda Luisita have effectively ceased, legally and physically, to be agricultural and, therefore, no longer CARPable are a matter of fact which cannot just be ignored by the Court and the DAR. Among the approving/endorsing issuances:[154]

(a) Resolution No. 392 dated 11 December 1996 of the Sangguniang Bayan of Tarlac favorably endorsing the 300-hectare industrial estate project of LIPCO;

(b) BOI Certificate of Registration No. 96-020 dated 20 December 1996 issued in accordance with the Omnibus Investments Code of 1987;

(c) PEZA Certificate of Board Resolution No. 97-202 dated 27 June 1997, approving LIPCO's application for a mixed ecozone and proclaiming the three hundred (300) hectares of the industrial land as a Special Economic Zone;

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[152] G.R. No. 150066, April 13, 2007, 521 SCRA 68, 82-83.

[153] *Supra* note 2.

[154] Memorandum of RCBC, p. 52.

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(d) Resolution No. 234 dated 08 August 1997 of the Sangguniang Bayan of Tarlac, approving the Final Development Permit for the Luisita Industrial Park II Project;

(e) Development Permit dated 13 August 1997 for the proposed Luisita Industrial Park II Project issued by the Office of the Sangguniang Bayan of Tarlac;[155]

(f) DENR Environmental Compliance Certificate dated 01 October 1997 issued for the proposed project of building an industrial complex on three hundred (300) hectares of industrial land;[156]

(g) Certificate of Registration No. 00794 dated 26 December 1997 issued by the HLURB on the project of Luisita Industrial Park II with an area of three million (3,000,000) square meters;[157]

(h) License to Sell No. 0076 dated 26 December 1997 issued by the HLURB authorizing the sale of lots in the Luisita Industrial Park II;

(i) Proclamation No. 1207 dated 22 April 1998 entitled "Declaring Certain Parcels of Private Land in Barangay San Miguel, Municipality of Tarlac, Province of Tarlac, as a Special Economic Zone pursuant to Republic Act No. 7916," designating the Luisita Industrial Park II consisting of three hundred hectares (300 has.) of industrial land as a Special Economic Zone; and

(j) Certificate of Registration No. EZ-98-05 dated 07 May 1998 issued by the PEZA, stating that pursuant to Presidential Proclamation No. 1207 dated 22 April 1998 and Republic Act No. 7916, LIPCO has been registered as an Ecozone Developer/Operator of Luisita Industrial Park II located in San Miguel, Tarlac, Tarlac.

While a mere reclassification of a covered agricultural land or its inclusion in an economic zone does not automatically

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[155] *Id.*

[156] *Id.* at 52-53.

[157] *Id* at 53.

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allow the corporate or individual landowner to change its use,[158] the reclassification process is a *prima facie* indicium that the land has ceased to be economically feasible and sound for agricultural uses. And if only to stress, DAR Conversion Order No. 030601074-764-(95) issued in 1996 by then DAR Secretary Garilao had effectively converted 500 hectares of *hacienda* land from agricultural to industrial/commercial use and authorized their disposition.

In relying upon the above-mentioned approvals, proclamation and conversion order, both RCBC and LIPCO cannot be considered at fault for believing that certain portions of Hacienda Luisita are industrial/commercial lands and are, thus, outside the ambit of CARP. The PARC, and consequently DAR, gravely abused its discretion when it placed LIPCO's and RCBC's property which once formed part of Hacienda Luisita under the CARP compulsory acquisition scheme via the assailed Notice of Coverage.

As regards the 80.51-hectare land transferred to the government for use as part of the SCTEX, this should also be excluded from the compulsory agrarian reform coverage considering that the transfer was consistent with the government's exercise of the power of eminent domain[159] and none of the parties actually questioned the transfer.

While We affirm the revocation of the SDP on Hacienda Luisita subject of PARC Resolution Nos. 2005-32-01 and 2006-34-01, the Court cannot close its eyes to certain "operative facts" that had occurred in the interim. Pertinently, the "operative fact" doctrine realizes that, in declaring a **law** or **executive action** null and void, or, by extension, no longer without force and effect, undue harshness and resulting unfairness must be avoided. This is as it should realistically be, since rights might

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[158] *Roxas & Company, Inc. v. DAMBA-NFSW*, G.R. Nos. 149548, *etc*., December 4, 2009, 607 SCRA 33, 56.

[159] RA 8974, Sec. 6.

See<http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=1231> (last visited June 23, 2011).

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have accrued in favor of natural or juridical persons and obligations justly incurred in the meantime.[160] The actual existence of a statute or executive act is, prior to such a determination, an operative fact and may have consequences which cannot justly be ignored; the past cannot always be erased by a new judicial declaration.[161]

The oft-cited *De Agbayani v. Philippine National Bank*[162] discussed the effect to be given to a legislative or executive act subsequently declared invalid:

> x x x It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the government organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.
>
> In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination of [unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, —

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[160] *Manila Motor Co., Inc. v. Flores*, 99 Phil. 738, 739 (1956).

[161] *Fernandez v. P. Cuerva & Co.*, No. L-21114, November 28, 1967, 21 SCRA 1095, 1104; citing *Chicot County Drainage Dist. v. Baxter States Bank* (1940) 308 US 371.

[162] No. L-23127, April 29, 1971, 38 SCRA 429, 434-435.

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with respect to particular relations, individual and corporate, and particular conduct, private and official." x x x

Given the above perspective and considering that more than two decades had passed since the PARC's approval of the HLI's SDP, in conjunction with numerous activities performed in good faith by HLI, and the reliance by the FWBs on the legality and validity of the PARC-approved SDP, perforce, certain rights of the parties, more particularly the FWBs, have to be respected pursuant to the application in a general way of the operative fact doctrine.

A view, however, has been advanced that the operative fact doctrine is of minimal or altogether without relevance to the instant case as it applies only in considering the effects of a declaration of unconstitutionality of a statute, and not of a declaration of nullity of a contract. This is incorrect, for this view failed to consider is that it is NOT the SDOA dated May 11, 1989 which was revoked in the instant case. Rather, it is PARC's approval of the HLI's Proposal for Stock Distribution under CARP which embodied the SDP that was nullified.

A recall of the antecedent events would show that on May 11, 1989, Tadeco, HLI, and the qualified FWBs executed the SDOA. This agreement provided the basis and mechanics of the SDP that was subsequently proposed and submitted to DAR for approval. It was only after its review that the PARC, through then Sec. Defensor-Santiago, issued the assailed Resolution No. 89-12-2 approving the SDP. Considerably, it is not the SDOA which gave legal force and effect to the stock distribution scheme but instead, it is the approval of the SDP under the PARC Resolution No. 89-12-2 that gave it its validity.

The above conclusion is bolstered by the fact that in Sec. Pangandaman's recommendation to the PARC Excom, what he proposed is the recall/revocation of PARC Resolution No. 89-12-2 approving HLI's SDP, and not the revocation of the SDOA. Sec. Pangandaman's recommendation was favorably endorsed by the PARC Validation Committee to the PARC Excom, and these recommendations were referred to in the assailed Resolution No. 2005-32-01. Clearly, it is not the SDOA which

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was made the basis for the implementation of the stock distribution scheme.

That the operative fact doctrine squarely applies to executive acts—in this case, the approval by PARC of the HLI proposal for stock distribution—is well-settled in our jurisprudence. In *Chavez v. National Housing Authority*,[163] We held:

> Petitioner postulates that the "operative fact" doctrine is inapplicable to the present case because it is an equitable doctrine which could not be used to countenance an inequitable result that is contrary to its proper office.
>
> On the other hand, the petitioner Solicitor General argues that the existence of the various agreements implementing the SMDRP is an operative fact that can no longer be disturbed or simply ignored, citing *Rieta v. People of the Philippines*.
>
> The argument of the Solicitor General is meritorious.
>
> The "operative fact" doctrine is embodied in *De Agbayani v. Court of Appeals*, wherein it is stated that a legislative or **executive act**, prior to its being declared as unconstitutional by the courts, is valid and must be complied with, thus:
>
> x x x x x x x x x
>
> This doctrine was reiterated in the more recent case of *City of Makati v. Civil Service Commission*, wherein we ruled that:
>
> > Moreover, we certainly cannot nullify the City Government's order of suspension, as we have no reason to do so, much less retroactively apply such nullification to deprive private respondent of a compelling and valid reason for not filing the leave application. **For as we have held, a void act though in law a mere scrap of paper nonetheless confers legitimacy upon past acts or omissions done in reliance thereof.** Consequently, the existence of a statute or **executive order** prior to its being adjudged void is an operative fact to which legal consequences are attached. It would indeed be ghastly unfair to prevent private respondent from relying upon the order of suspension in lieu of a formal leave application. (Citations omitted; Emphasis supplied.)

[163] G.R. No. 164527, August 15, 2007, 530 SCRA 235.

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The applicability of the operative fact doctrine to executive acts was further explicated by this Court in *Rieta v. People*,[164] thus:

Petitioner contends that his arrest by virtue of Arrest Search and Seizure Order (ASSO) No. 4754 was invalid, as the law upon which it was predicated — General Order No. 60, issued by then President Ferdinand E. Marcos — was subsequently declared by the Court, in *Tañada v. Tuvera*, 33 to have no force and effect. Thus, he asserts, any evidence obtained pursuant thereto is inadmissible in evidence.

We do not agree. In *Tañada*, the Court addressed the possible effects of its declaration of the invalidity of various presidential issuances. Discussing therein how such a declaration might affect acts done on a presumption of their validity, the Court said:

> ". . . In similar situations in the past this Court had taken the pragmatic and realistic course set forth in *Chicot County Drainage District vs. Baxter Bank* to wit:
>
> > 'The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. . . . It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to [the determination of its invalidity], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects — with respect to particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest

[164] G.R. No. 147817, August 12, 2004, 436 SCRA 273.

> from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.'
>
> x x x x x x x x x
>
> "Similarly, the implementation/enforcement of presidential decrees prior to their publication in the Official Gazette is 'an operative fact which may have consequences which cannot be justly ignored. The past cannot always be erased by a new judicial declaration . . . that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.'"

The Chicot doctrine cited in *Tañada* advocates that, prior to the nullification of a statute, there is an imperative necessity of taking into account its actual existence as an operative fact negating the acceptance of "a principle of absolute retroactive invalidity." Whatever was done while the legislative or the **executive act** was in operation should be duly recognized and presumed to be valid in all respects. **The ASSO that was issued in 1979 under General Order No. 60 — long before our Decision in *Tañada* and the arrest of petitioner — is an operative fact that can no longer be disturbed or simply ignored.** (Citations omitted; Emphasis supplied.)

To reiterate, although the assailed Resolution No. 2005-32-01 states that it revokes or recalls the SDP, what it actually revoked or recalled was the PARC's approval of the SDP embodied in Resolution No. 89-12-2. Consequently, what was actually declared null and void was an executive act, PARC Resolution No. 89-12-2,[165] and not a contract (SDOA). It is, therefore, wrong to say that it was the SDOA which was annulled in the instant case. Evidently, the operative fact doctrine is applicable.

IV.

While the assailed PARC resolutions effectively nullifying the Hacienda Luisita SDP are upheld, the revocation must, by application of the operative fact principle, give way to the right

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[165] See *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, G.R. Nos. 183591, 183752, 183893, 183951 and 183962, October 14, 2008, 568 SCRA 402.

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of the original 6,296 qualified FWBs to choose whether they want to remain as HLI stockholders or not. The Court cannot turn a blind eye to the fact that in 1989, 93% of the FWBs agreed to the SDOA (or the MOA), which became the basis of the SDP approved by PARC per its Resolution No. 89-12-2 dated November 21, 1989. From 1989 to 2005, the FWBs were said to have received from HLI salaries and cash benefits, hospital and medical benefits, 240-square meter homelots, 3% of the gross produce from agricultural lands, and 3% of the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare lot sold to SCTEX. HLI shares totaling 118,391,976.85 were distributed as of April 22, 2005.[166] On August 6, 20l0, HLI and private respondents submitted a Compromise Agreement, in which HLI gave the FWBs the option of acquiring a piece of agricultural land or remain as HLI stockholders, and as a matter of fact, most FWBs indicated their choice of remaining as stockholders. These facts and circumstances tend to indicate that some, if not all, of the FWBs may actually desire to continue as HLI shareholders. A matter best left to their own discretion.

With respect to the other FWBs who were not listed as qualified beneficiaries as of November 21, 1989 when the SDP was approved, they are not accorded the right to acquire land but shall, however, continue as HLI stockholders. All the benefits and homelots[167] received by the 10,502 FWBs (6,296 original FWBs and 4,206 non-qualified FWBs) listed as HLI stockholders as of August 2, 2010 shall be respected with no obligation to refund or return them since the benefits (except the homelots) were received by the FWBs as farmhands in the agricultural enterprise of HLI and other fringe benefits were granted to them pursuant to the existing collective bargaining agreement with Tadeco. If the number of HLI shares in the names of the original FWBs who opt to remain as HLI stockholders falls below the guaranteed allocation of 18,804.32 HLI shares per

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[166] *Rollo,* p. 193.

[167] *Id.* at 3738. These homelots do not form part of the 4,915.75 hectares of agricultural land in Hacienda Luisita. These are part of the residential land with a total area of 120.9234 hectares, as indicated in the SDP.

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FWB, the HLI shall assign additional shares to said FWBs to complete said minimum number of shares at no cost to said FWBs.

With regard to the homelots already awarded or earmarked, the FWBs are not obliged to return the same to HLI or pay for its value since this is a benefit granted under the SDP. The homelots do not form part of the 4,915.75 hectares covered by the SDP but were taken from the 120.9234 hectare residential lot owned by Tadeco. Those who did not receive the homelots as of the revocation of the SDP on December 22, 2005 when PARC Resolution No. 2005-32-01 was issued, will no longer be entitled to homelots. Thus, in the determination of the ultimate agricultural land that will be subjected to land distribution, the aggregate area of the homelots will no longer be deducted.

There is a claim that, since the sale and transfer of the 500 hectares of land subject of the August 14, 1996 Conversion Order and the 80.51-hectare SCTEX lot came after compulsory coverage has taken place, the FWBs should have their corresponding share of the land's value. There is merit in the claim. Since the SDP approved by PARC Resolution No. 89-12-2 has been nullified, then all the lands subject of the SDP will automatically be subject of compulsory coverage under Sec. 31 of RA 6657. Since the Court excluded the 500-hectare lot subject of the August 14, 1996 Conversion Order and the 80.51-hectare SCTEX lot acquired by the government from the area covered by SDP, then HLI and its subsidiary, Centennary, shall be liable to the FWBs for the price received for said lots. HLI shall be liable for the value received for the sale of the 200-hectare land to LRC in the amount of PhP 500,000,000 and the equivalent value of the 12,000,000 shares of its subsidiary, Centennary, for the 300-hectare lot sold to LIPCO for the consideration of PhP 750,000,000. Likewise, HLI shall be liable for PhP 80,511,500 as consideration for the sale of the 80.51-hectare SCTEX lot.

We, however, note that HLI has allegedly paid 3% of the proceeds of the sale of the 500-hectare land and 80.51-hectare SCTEX lot to the FWBs. We also take into account the payment of taxes and expenses relating to the transfer of the land and

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HLI's statement that most, if not all, of the proceeds were used for legitimate corporate purposes. In order to determine once and for all whether or not all the proceeds were properly utilized by HLI and its subsidiary, Centennary, DAR will engage the services of a reputable accounting firm to be approved by the parties to audit the books of HLI to determine if the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot were actually used for legitimate corporate purposes, titling expenses and in compliance with the August 14, 1996 Conversion Order. The cost of the audit will be shouldered by HLI. If after such audit, it is determined that there remains a balance from the proceeds of the sale, then the balance shall be distributed to the qualified FWBs.

A view has been advanced that HLI must pay the FWBs yearly rent for use of the land from 1989. We disagree. It should not be forgotten that the FWBs are also stockholders of HLI, and the benefits acquired by the corporation from its possession and use of the land ultimately redounded to the FWBs' benefit based on its business operations in the form of salaries, and other fringe benefits under the CBA. To still require HLI to pay rent to the FWBs will result in double compensation.

For sure, HLI will still exist as a corporation even after the revocation of the SDP although it will no longer be operating under the SDP, but pursuant to the Corporation Code as a private stock corporation. The non-agricultural assets amounting to PhP 393,924,220 shall remain with HLI, while the agricultural lands valued at PhP 196,630,000 with an original area of 4,915.75 hectares shall be turned over to DAR for distribution to the FWBs. To be deducted from said area are the 500-hectare lot subject of the August 14, 1996 Conversion Order, the 80.51-hectare SCTEX lot, and the total area of 6,885.7 square meters of individual lots that should have been distributed to FWBs by DAR had they not opted to stay in HLI.

HLI shall be paid just compensation for the remaining agricultural land that will be transferred to DAR for land distribution to the FWBs. We find that the date of the "taking" is November 21, 1989, when PARC approved HLI's SDP per PARC

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Resolution No. 89-12-2. DAR shall coordinate with LBP for the determination of just compensation. We cannot use May 11, 1989 when the SDOA was executed, since it was the SDP, not the SDOA, that was approved by PARC.

The instant petition is treated *pro hac vice* in view of the peculiar facts and circumstances of the case.

WHEREFORE, the instant petition is *DENIED*. PARC Resolution No. 2005-32-01 dated December 22, 2005 and Resolution No. 2006-34-01 dated May 3, 2006, placing the lands subject of HLI's SDP under compulsory coverage on mandated land acquisition scheme of the CARP, are hereby *AFFIRMED* with the *MODIFICATION* that the original 6,296 qualified FWBs shall have the option to remain as stockholders of HLI. DAR shall immediately schedule meetings with the said 6,296 FWBs and explain to them the effects, consequences and legal or practical implications of their choice, after which the FWBs will be asked to manifest, in secret voting, their choices in the ballot, signing their signatures or placing their thumbmarks, as the case may be, over their printed names.

Of the 6,296 FWBs, he or she who wishes to continue as an HLI stockholder is entitled to 18,804.32 HLI shares, and, in case the HLI shares already given to him or her is less than 18,804.32 shares, the HLI is ordered to issue or distribute additional shares to complete said prescribed number of shares at no cost to the FWB within thirty (30) days from finality of this Decision. Other FWBs who do not belong to the original 6,296 qualified beneficiaries are not entitled to land distribution and shall remain as HLI shareholders. All salaries, benefits, 3% production share and 3% share in the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare SCTEX lot and homelots already received by the 10,502 FWBs, composed of 6,296 original FWBs and 4,206 non-qualified FWBs, shall be respected with no obligation to refund or return them.

Within thirty (30) days after determining who from among the original FWBs will stay as stockholders, DAR shall segregate from the HLI agricultural land with an area of 4,915.75 hectares subject of PARC's SDP-approving Resolution No. 89-12-2 the

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following: (a) the 500-hectare lot subject of the August 14, l996 Conversion Order; (b) the 80.51-hectare lot sold to, or acquired by, the government as part of the SCTEX complex; and (c) the aggregate area of 6,885.7 square meters of individual lots that each FWB is entitled to under the CARP had he or she not opted to stay in HLI as a stockholder. After the segregation process, as indicated, is done, the remaining area shall be turned over to DAR for immediate land distribution to the original qualified FWBs who opted not to remain as HLI stockholders.

The aforementioned area composed of 6,885.7-square meter lots allotted to the FWBs who stayed with the corporation shall form part of the HLI assets.

HLI is directed to pay the 6,296 FWBs the consideration of PhP 500,000,000 received by it from Luisita Realty, Inc. for the sale to the latter of 200 hectares out of the 500 hectares covered by the August 14, 1996 Conversion Order, the consideration of PhP 750,000,000 received by its owned subsidiary, Centennary Holdings, Inc. for the sale of the remaining 300 hectares of the aforementioned 500-hectare lot to Luisita Industrial Park Corporation, and the price of PhP 80,511,500 paid by the government through the Bases Conversion Development Authority for the sale of the 80.51-hectare lot used for the construction of the SCTEX road network. From the total amount of PhP 1,330,511,500 (PhP 500,000,000 + PhP 750,000,000 + PhP 80,511,500 = PhP 1,330,511,500) shall be deducted the 3% of the total gross sales from the production of the agricultural land and the 3% of the proceeds of said transfers that were paid to the FWBs, the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary Holdings, Inc. for legitimate corporate purposes. For this purpose, DAR is ordered to engage the services of a reputable accounting firm approved by the parties to audit the books of HLI and Centennary Holdings, Inc. to determine if the PhP 1,330,511,500 proceeds of the sale of the three (3) aforementioned lots were used or spent for legitimate corporate purposes. Any unspent or unused balance as determined by the audit shall be distributed to the 6,296 original FWBs.

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HLI is entitled to just compensation for the agricultural land that will be transferred to DAR to be reckoned from November 21, 1989 per PARC Resolution No. 89-12-2. DAR and LBP are ordered to determine the compensation due to HLI.

DAR shall submit a compliance report after six (6) months from finality of this judgment. It shall also submit, after submission of the compliance report, quarterly reports on the execution of this judgment to be submitted within the first 15 days at the end of each quarter, until fully implemented.

The temporary restraining order is lifted.

SO ORDERED.

Leonardo-de Castro, Bersamin, del Castillo, Abad, and *Perez, JJ.,* concur.

Corona, C.J., see dissenting opinion.

Brion, J., see separate opinion.

Villarama, Jr., J., joins *J.* Brion in his separate opinion.

Mendoza, J., see separate opinion.

Sereno, J., see dissenting opinion.

Carpio, J., no part, former law firm approved as counsel to a party.

Peralta, J., on official leave.

SEPARATE CONCURRING AND DISSENTING OPINION

BRION, *J.*:

On December 22, 2005, the public respondent Presidential Agrarian Reform Council (*PARC*) issued Resolution No. 2005-32-01. This Resolution revoked the Stock Distribution Plan (*SDP*) that Tarlac Development Corporation (*Tadeco*) executed with its spin-off corporation Hacienda Luisita, Inc. (*HLI*) and its qualified farmworkers-beneficiaries (*FWBs*), and placed the

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Hacienda Luisita under the compulsory coverage of the Comprehensive Agrarian Reform Program (*CARP*). This Resolution set in motion a series of events that led to the present controversy.

The Court is mainly called upon to decide the legality of the HLI's SDP. An underlying issue is whether the PARC has the power and authority to revoke the SDP that it previously approved; if so, whether there is legal basis to revoke it and place the *Hacienda Luisita* under compulsory coverage of the CARP. The Court has to resolve, too, whether the petitioners-intervenors Luisita Industrial Park Corporation (*LIPCO*) and Rizal Commercial Banking Corporation (*RCBC*) legally acquired the converted parcels of land (*acquired lands*) from HLI.

FACTUAL ANTECEDENTS

Acquisition of Hacienda Luisita

To put this case in its proper context, I begin with a review of HLI's history and the significant events that ultimately led to the present case.

The *Hacienda Luisita* is a 6,443 hectare parcel of land originally owned by the *Compania General de Tabacos de Filipinas* (*Tabacalera*).[1] In 1957, the Spanish owners of Tabacalera decided to sell this land and its sugar mill, *Central Azucarera de Tarlac*. Jose Cojuangco, Sr. took interest and requested assistance from the Philippine government in raising the necessary funds through: (a) the Central Bank, to obtain a dollar loan from the Manufacturer's Trust Company (*MTC*) in New York for the purchase of the sugar mill; and (b) the Government Service Insurance System (GSIS), to obtain a peso loan for the purchase of the *Hacienda*. The Central Bank used a portion of the country's dollar reserves as security for Cojuangco's loan with the MTC **on the condition that Cojuangco would acquire *Hacienda Luisita* for distribution to farmers within 10 years from its acquisition**.[2] The GSIS also approved Jose Cojuangco, Sr.'s loan for ₱5.9 million under Resolution No. 3203 (November 25, 1957) which stated in part:

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[1] *Rollo*, p. 3044.

[2] *Id.* at 3809.

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12. That the lots comprising the Hacienda Luisita shall be subdivided by the applicant-corporation among the tenants who shall pay the cost thereof under reasonable terms and conditions;[3]

At the urging of Jose Cojuangco, Sr., GSIS issued Resolution No. 356 (February 5, 1958), amending Resolution No. 3203 in the following manner:

That the lots comprising the Hacienda Luisita shall be subdivided by the applicant-corporation and sold at cost to the tenants, *should there be any*, and whenever conditions should exist warranting such action under the provisions of the Land Tenure Act;[4]

Thus, on April 8, 1958, Jose Cojuangco, Sr., through Tadeco, acquired *Hacienda Luisita* and *Central Azucarera de Tarlac*.[5]

Ten (10) years after the acquisition of *Hacienda Luisita*, the land remained undistributed, contrary to the conditions stated in the loan/security agreements. Citing GSIS' Resolution No. 356, the Cojuangcos reasoned out that there were no tenants in the *Hacienda*; thus, there was no one to distribute the land to.[6]

On May 7, 1980, the Marcos government filed a case before the Manila Regional Trial Court (*RTC*) to compel Tadeco to surrender *Hacienda Luisita* to the Ministry of Agrarian Reform so that the land could be distributed to the farmers. On December 2, 1985, the Manila RTC ordered Tadeco to surrender the land to the Ministry of Agrarian Reform. The Cojuangcos appealed this decision to the Court of Appeals (*CA*).[7]

The Stock Distribution Option Agreement

While the case was pending with the CA, Corazon Aquino became President of the Philippines. On July 22, 1987 President Aquino issued Presidential Proclamation No. 131 and Executive

[3] *Id.* at 3645.

[4] *Id.* at 3646.

[5] *Id.* at 3810.

[6] *Id.* at 3810.

[7] *Id.* at 3811.

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Order (*EO*) No. 229, which outlined her agrarian reform program. EO No. 229 included a provision for the Stock Distribution Option (*SDO*), a mode of complying with the land reform law that did not require actual transfer of the land to the tiller.[8]

In view of these developments, the government withdrew its case against the Cojuangcos on March 17, 1988. The Department of Agrarian Reform (*DAR*), GSIS, and the Central Bank did not object to the motion to dismiss the case, on the assumption that *Hacienda Luisita* would be distributed through the government's CARP. On May 18, 1988, the CA dismissed the case the Marcos government filed against Tadeco.[9]

On June 10, 1988, President Aquino signed into law Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (*CARL*). The CARL included a provision that authorized stock distribution as a mode of compliance; the SDO allowed a corporate landowner to give its farmers and farmworkers shares of its stocks in lieu of actually distributing the land to them.[10] HLI was incorporated on August 23, 1988, presumably to avail of the SDO under the CARL.[11]

On May 11, 1989, HLI, Tadeco and the Hacienda Luisita farmworkers executed a Stock Distribution Option Agreement (*SDOA*). The SDOA was signed by 92.9% of the farmworkers, or by 5,498 out of a total of 6,296 farmworkers.[12]

On October 14, 1989, the DAR conducted a referendum among the farmworkers. Out of the 5,315 FWBs who participated, 5,117 voted in favor of the SDOA. As a result, the PARC unanimously approved HLI's SDP — which was based on the SDOA — through **Resolution No. 89-12-2** dated November 21, 1989. This was the first SDP that PARC approved.[13]

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[8] *Id.* at 3811.

[9] *Id.* at 3811.

[10] *Id.* at 3811.

[11] *Id.* at 3811.

[12] *Id.* at 3812.

[13] *Id.* at 3653.

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Land Conversion and Sale to Third Parties

On August 10, 1995, HLI filed an application for the conversion of 500 hectares of Hacienda Luisita from agricultural to industrial use.[14] None of the parties to the present case disputes that HLI's application had the support of 5000 or so FWBs, including respondent Rene Galang and Jose Julio Suniga who signed and submitted a Manifestation of Support to the DAR.[15] A year later, or August 14, 1996, then DAR Secretary Ernesto Garilao issued a conversion order, granting HLI's application to convert the 500 hectares of HLI land from agricultural to industrial use. The conversion order was granted because the "area applied for conversion is no longer economically feasible and sound for agricultural purposes."[16]

Thereafter, on October 14, 1996, the HLI entered into a joint venture agreement with RCBC, Agila Holdings, Inc., and Itochu Corporation to form LIPCO whose main objective was to handle the acquisition, development, and operation of an industrial park on the converted portion of the *Hacienda*.[17] LIPCO registered with the Board of Investments on December 20, 1996. On June 27, 1997, the Philippine Economic Zone Authority (*PEZA*) approved LIPCO's application to be declared a mixed ecozone. It further proclaimed the 300 hectare area as a Special Economic Zone, known as Luisita Industrial Park 2.

On December 11, 1996, the Sangguniang Bayan ng Tarlac, Tarlac (which earlier reclassified 3,290 hectares of Hacienda Luisita from agricultural to commercial/industrial/residential land[18]) issued a resolution endorsing and recognizing LIPCO's plan to establish an industrial estate.

On December 13, 1996, HLI transferred 300 hectares of industrial land to Centennary Holdings, Inc. (*Centennary*), in

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[14] *Id.* at 3668.

[15] *Id.* at 1327-28.

[16] *Id.* at 4227.

[17] *Id.* at 4229.

[18] Resolution No. 280 dated September 1, 1996, *rollo*, p. 4226.

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exchange for 12,000,000 shares of stock of Centennary, through a Deed of Conveyance and Assignment.[19] Centennary then sold the land to LIPCO through their November 12, 1997 Memorandum of Agreement, so that LIPCO can develop it into a first-class industrial estate.[20] To finance the project, LIPCO obtained a ₱300 million loan from RCBC, secured by a real estate mortgage over the land.[21]

On April 22, 1998, then President Fidel V. Ramos declared the 300 hectare property as a Special Economic Zone under Proclamation No. 1207.[22] Following this proclamation, the PEZA issued Certificate of Registration No. EZ-98-05 on May 7, 1998, certifying that LIPCO is the duly registered ecozone developer/ operator of Luisita Industrial Park 2.[23]

When LIPCO could not pay its outstanding loan to RCBC, it entered a *dacion en pago* to settle the loan which had ballooned to ₱432.05 million by November 2002.[24] On November 25, 2004, LIPCO and RCBC entered into a Deed of Absolute Assignment, through which LIPCO conveyed two parcels of land (with a total area of 184.22 hectares) to RCBC, leaving LIPCO with 115.779 hectares of land.[25]

HLI also sold the remaining 200 hectares of industrial land to Luisita Realty Corporation (*Luisita Realty*), 100 hectares in 1997 for ₱250 million, and another 100 hectares in 1998 for another ₱250 million.[26] (Details of this sale are not clear from the records of the present case as Luisita Realty is not an active party to the case.)

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[19] *Rollo*, Volume 3, p. 4229.

[20] *Id.* at 4232.

[21] *Id.* at 3420-3421.

[22] *Id.* at 4233.

[23] *Id.* at 4235.

[24] *Id.* at 4239.

[25] *Id.* at 4240.

[26] *Id.* at 3669.

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The Petitions before PARC

Claiming that the HLI did not deliver on its promises under the SDOA/SDP, the Supervisory Group of workers of HLI filed a petition with the DAR on October 14, 2003, seeking to renegotiate the SDOA/SDP.[27] Similarly, on December 4, 2003, the DAR received another petition from the *Alyansa ng mga Manggagawang Bukid ng Hacienda Luisita* (*AMBALA*), a group composed of HLI farmers and farmworkers, praying for the revocation of the SDOA/SDP.[28]

On November 22, 2004, then DAR Secretary Rene C. Villa issued Special Order No. 789, series of 2004, which created the *Special Task Force on Hacienda Luisita, Inc. Stock Distribution Option Plan*.[29] This task force was convened primarily to review the SDP and evaluate HLI's compliance with its terms and conditions.

Based on the parties' pleadings and the ocular inspection conducted, the Special Task Force issued a Terminal Report on September 22, 2005, which found that the HLI did not comply with its obligations under the law in implementing the SDP.[30] The pertinent portions of the Terminal Report are quoted below:

VI. FINDINGS, ANALYSIS AND RECOMMENDATION:

1. Providing for the quintessence and spirit of the agrarian reform program, Republic Act No. 6657 explicitly provides:

> "SECTION 2. Declaration of Principles and Policies. — It is the policy of the State to pursue a Comprehensive Agrarian Reform Program (CARP). The welfare of the landless farmers and farmworkers will receive the highest consideration to promote social justice and to move the nation toward sound rural development and industrialization, and the establishment of owner cultivatorship of economic-size farms as the basis of Philippine agriculture.

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[27] *Id.* at 153-156.

[28] *Id.* at 175-183.

[29] *Id.* at 679-680.

[30] *Id.* at 386-405.

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> To this end, a more equitable distribution and ownership of land, with due regard to the rights of landowners to just compensation and to the ecological needs of the nation, shall be undertaken to provide farmers and farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands" (underscoring added).

Within the context of the foregoing policy/objective, the farmer/ farmworker beneficiaries (FWBs) in agricultural land owned and operated by corporations may be granted the option by the latter, with the intervention and prior certification of DAR, "x x x the right to purchase such portion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total asset x x x" (Sec. 31, Rep. Act No. 6657). Toward this end, DAR issued Administrative Order No. 10, series of 1988, copy of which is attached as Annex "K" and made an integral part hereof, which requires that the stock distribution option (SDO) shall meet the following criteria, reading, *inter alia*:

> "a. that the continued operation of the corporation with its agricultural land intact and unfragmented is viable, with potential for growth and increased profitability;
>
> "b. that the plan for the stock distribution to qualified beneficiaries would result in increased income and greater benefits to them, than if the lands were divided and distributed to them individually;
>
> x x x x x x x x x.

And to ensure effective and fair implementation of the contemplated Stock Distribution Plan (SDP), the said AO also provides:

> "SEC. 12. Revocation of Certificate of Compliance. — Non-compliance with any of the requirements of Sec. 31 of RA 6657, as implemented by these Implementing Guidelines shall be grounds for the revocation of the Certificate of Compliance issued to the corporate landowner-applicant.
>
> SEC. 13. Reservation Clause — Nothing herein shall be construed as precluding the PARC from making its own independent evaluation and assessment of the stock distribution plan of the corporate landowner-applicant and from prescribing other requirements."

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Herein, however, there is yet no Certificate of Compliance issued.

The reason is simple. Despite the lapse of sixteen (16) years, from the time the SDP was approved in November 1989, by resolution of the Presidential Agrarian Reform Council (PARC), the objective and policy of CARP, *i.e.*, acquisition and distribution (herein under the Stock Distribution Plan, only shares of stocks) is yet to be fully completed; the FWBs, instead of the promised/envisioned better life under the CARP (herein, as corporate owner), do still live in want, in abject poverty, highlighted by the resulting loss of lives in their vain/futile attempt to be financially restored at least to where they were before the CARP(SDP) was implemented. While they were then able to make both ends meet, with the SDP, their lives became miserable.

2. For the foregoing considerations, as further dramatized by the following violations/noncompliance with the guidelines prescribed, which are legally presumed as integrated in the agreements/accords/stipulations arrived at thereunder like the HLI SDP, namely:

2.1 Noncompliance with Section 11 of Administrative Order No. 10, Series of 1988, which provides:

> "The approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation plan.

The Stock Distribution Plan, however, submitted a 30-year implementation period in terms of the transfer of shares of stocks to the farmworkers beneficiaries (FWBs). The MOA provides:

> "At the end of each fiscal year: for a period of 30 years, SECOND PARTY shall arrange with the FIRST PARTY the acquisition and distribution to the THIRD PARTY on the basis of the number of days worked and at no cost to them of one-thirtieth (1/30) of…"

Plainly, pending the issuance of the corresponding shares of stocks, the FWBs remain ordinary farmers and/or farmworkers and the land remain under the full ownership and control of the original owner, the HLI/TADECO.

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To date the issuance and transfer of the shares of stocks, together with the recording of the transfer, are yet to be complied with.

2.2 Noncompliance with the representations/warranties made under Section 5(a) and (b) of said Administrative Order No. 10.

As claimed by HLI itself, the corporate activity has already stopped so that the contemplated profitability, increased income and greater benefits enumerated in the SDP have remained mere illusions.

2.3 The agricultural land involved was not maintained "unfragmented." At least, 500 hectares hereof have been carved out after its land use has been converted to non-agricultural uses.

The recall of said SDP/SDO of HLI is recommended. More so since:

1. **It is contrary to Public Policy**

Section 2 of Republic Act 6657 provides that the welfare of the landless farmworkers will receive the highest consideration to promote social justice. As such, the State undertake a more equitable distribution and ownership of land that shall provide farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

In the case of Hacienda Luisita, the farmworkers alleged that the quality of their lives has not improved. In fact, it even deteriorated especially with the HLI Management declaration that the company has not gained profits, in the last 15 years, that there could be no declaration and distribution of dividends.

2. The matter of issuance/distribution shares of stocks in lieu of actual distribution of the agricultural land involved, was made totally dependent on the discretion/caprice of HLI. Under the setup, the agreement is grossly onerous to the FWBs as their man days of work cannot depart from whatever management HLI unilaterally directs.

They can be denied the opportunity to be granted a share of stock by just not allowing them to work altogether under the guise of rotation. Meanwhile, within the 30-year period of bondage, they may already reach retirement or, worse, get retrenched for any reason, then, they forever lose whatever benefit he could have received as regular agrarian beneficiary under the CARP if only the SDP of HLI were not authorized or approved.

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Incidentally, the FWBs did not have participation in the valuation of the agricultural land for the purpose of determining its proportionate equity in relation to the total assets of the corporation. Apparently, the sugarlands were undervalued.

3. The FWBs were misled into believing by the HLI, through its carefully worded Proposal that "xxx the stock distribution plan envisaged by Tarlac Development Corporation, in effect, assured of:

> "A. Distributing the shares of stock over a number of years among the qualified beneficiaries at no cost to them;
>
> B. Allowing the farmworker to continue to work on the land as such and receive the wages and other benefits provided for by his collective bargaining agreement with the corporate landowner;
>
> C. Entitling him to receive dividends, whether in cash or in stock, on the shares already distributed to him and benefit from whatever appreciation in value that the said shares may gain as the corporation becomes profitable;
>
> D. Qualifying him to become the recipient of whatever income-augmenting and benefit-improving schemes that the spin-off corporation may establish, such as the payment of the guaranteed three (3%) percent of gross sales every year and the free residential or homelots to be allotted to family beneficiaries of the plan; and
>
> E. Keeping the agricultural land intact and unfragmented, to maintain the viability of the sugar operation involving the farm as a single unit and thus, warrant to the acknowledged farmworker-beneficiaries, hand-in-hand with their acquisition of the shares of the capital stock of the corporation owning the land, a continuing and stable source of income" (Annex "A", *supra*).

At the expense of being repetitive, the sugar-coated assurances were, more than enough to made them fall for the SDO as they made them feel rich as "stock holder" of a rich and famous corporation despite the dirt in their hands and the tatters, they use; given the feeling of security of tenure in their work when there is none; expectation to receive dividends when the corporation has already suspended operations allegedly due to losses; and a stable sugar production by maintaining the agricultural lands when a substantial portion thereof, almost 1/8 of the total area, has already been converted to non-agricultural uses.

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Based on the Terminal Report, the DAR issued a Memorandum dated September 30, 2005, recommending to the PARC Executive Committee the revocation of the HLI SDP that the PARC initially approved under Resolution No. 89-12-2 dated November 21, 1989. According to the September 30, 2005 Memorandum:

> The DAR Special Legal Team, created by the undersigned to make a follow through on the work start**e**d by the Hacienda Luisita Task Force during the time of former Secretary Rene C. Villa, for the purpose of reviewing the implementation of subject SDP, has conducted a thorough review of Hacienda Luisita's operation in relation to its implementation, and consistent with the provisions of the relevant PARC resolution and the subsequent Memorandum of Agreement (MOA) executed by and between the HLI Management and the concerned Farm Workers Beneficiaries (FWBs), has recommend (sic) for the scrapping and/or revocation of said SDP, on the following grounds, to wit:
>
> 1. That despite the lapse of sixteen (16) years, the lives of the concerned Farm Workers Beneficiaries (FWBs) became even more miserable, contrary to what has been envisioned by the said SDP. This "reality" clearly undermines Section 2 of RA 6657 which provides, "that the welfare of landless farm workers will receive the highest consideration to promote social justice, under which context, the State shall undertake a more equitable distribution and ownership of land that shall provide farm workers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands."
> 2. Non-compliance on the part of HLI to relevant provisions of Administrative Order No. 10, Series of 1988, specifically Sections 5(a) and 5(b) and Section 11, thereof, in relation to the implementation of said SDP.

Section 5 (a) and (b) provides:

> Section 5. Criteria for Evaluation Proposal — The stock distribution plan submitted by the corporate landowner-applicant shall meet the following minimum criteria:
>
> a. That the continued operation of the corporation with its agricultural land intact and unfragmented is viable, with potential for growth and increased profitability;

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b. That the plan for stock distribution to qualified beneficiaries would result in increased income and greater benefits to them, than if their lands were divided and distributed to them individually; x x x

The following are the violations committed in the above-cited provisions, to wit:

— The HLI Management declared that the company has not gained profits in the last 15 years. Hence, the FWBs of HLI do not receive financial return *i.e.*, ten percent (10%) dividend, three percent (3%) gross production share (partial), and three percent (3%) out of thirty-three percent representing equity shares from the proceeds of the sale of the converted land from HLI (partial);

— In the Focused Group Discussion (FGC) and Ocular Inspection (OCI), it was found that the number of shares of stocks to be received by the FWBs depends on their designations (*i.e.*, permanent, casual, or seasonal) and the number of man days. Retired and retrenched workers are not given shares of stocks and cease to be stockholders. This setup is grossly onerous to the FWBs and one-sided in favour of HLI;

— Not all FWBs were given homelots; and

— The subject agricultural land was not maintained "unfragmented." More than 1/8 of the total area or 500 hectares has already been converted to non-agricultural use.

Section 11 provides:

Section 11. Implementation — Monitoring of the Plan — the approved stock distribution plan shall be implemented within the three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded on the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the stock distribution plan.

Upon completion, the corporate landowner-applicant shall be issued a Certificate of Compliance. The Secretary of Agrarian Reform or his designated representatives shall strictly monitor the implementation to determine whether or not there has been compliance with the approved stock distribution plan as well as the requirements of the CARP. For this purpose, the corporate

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> landowner-applicant shall make available its premises for ocular inspection, its personnel for interview, and its records for examination at normal business hours.
>
> Clearly, there is no Certificate of Compliance issued up to this date, or after sixteen (16) years from the time of approval of said SDP by the Presidential Agrarian Reform Council. This could be traced to one of the onerous provisions of the MOA between HLI and the FWBs which stipulates a 30-year period of implementation to complete the required distribution of shares of stocks, a clear violation of the explicit provision of Section 11 of Administrative Order No. 10, Series of 1988, mandating a 3-month period of implementation for such purposes.[31]

On October 13, 2005, the PARC Executive Committee created the PARC ExeCom Validation Committee *via* Resolution No. 2005-SP-01 to review the recommendations of the DAR Secretary. After meeting with all the parties involved, the PARC ExeCom Validation Committee confirmed the DAR's recommendation to revoke the SDP. On December 13, 2005, PARC issued **Resolution No. 2005-32-01**, revoking the SDP and placing HLI lands under compulsory CARP coverage.[32] HLI moved for the reconsideration of this PARC resolution on January 2, 2006.[33] On the same day, the DAR issued a Notice of Coverage to HLI. This Notice of Coverage included the parcels of land already transferred to LIPCO and RCBC.[34]

The Present Case

While its motion for reconsideration was still pending with the DAR, HLI filed the present petition for *certiorari* with this Court, assailing PARC Resolution No. 2005-32-01 and the Notice of Coverage. On May 3, 2006, PARC subsequently issued Resolution No. 2006-34-01, denying HLI's motion for reconsideration.[35]

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[31] *Rollo*, pp. 340-342.

[32] *Id.* at 730-731.

[33] *Id.* at 732-765.

[34] *Id.* at 103-104.

[35] *Rollo*, pp. 407-425.

On July 13, 2006, the Office of the Solicitor General (*OSG*), representing PARC and the DAR, filed its Comment to HLI's petition.

On December 2, 2006, Noel Mallari, the Secretary General of AMBALA, filed a Manifestation and Motion with Comment with this Court, explaining that he had already broken away from AMBALA and had formed the Farmworkers Agrarian Reform Movement, Inc. (*FARM*), now respondent-intervenor, with other former members of AMBALA.[36] Noel Mallari subsequently left FARM and returned to AMBALA. Renato Lalic and the other members of FARM continued as respondent-intervenors in these proceedings.

On October 30, 2007, RCBC moved to intervene in the proceedings as a petitioner-intervenor;[37] LIPCO similarly intervened.[38] In essence, these two petitioners-in-intervention assailed the Notice of Coverage for including the parcels of land that they claim to have purchased in good faith from HLI.

The Court conducted oral arguments on August 18, 2010 and August 24, 2010.

On August 31, 2010, the Court issued a Resolution creating a mediation panel[39] to explore the possibility of the parties coming to a compromise agreement. When the parties could not come to a suitable agreement within the given period of time, the mediation panel suspended further proceedings.

THE ISSUES

HLI holds the view that the PARC has no authority to nullify, revoke or rescind the PARC-approved SDP. It further disputes the private respondent farmer groups' claim that the SDP is

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[36] *Id.* at 436-450.

[37] *Id.* at 1350-1359.

[38] *Id.* at 1535-1544.

[39] The Mediation Panel is composed of former Associate Justice Ma. Alicia Austria-Martinez, as Chairperson, and former CA Justices Hector Hofilena and Teresita Dy-Liacco Flores as members. *Rollo*, Volume 3, pp. 3060-3062.

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void for being illegal. HLI stresses in this regard that the SDP authorized the distribution of the following benefits to the FWBs:

a. 59 million shares of stock distributed for free including fringe benefits;

b. ₱3 billion in salaries, wages, and other benefits;

c. ₱150 million representing 3% of the gross sales of the production of the agricultural lands;

d. ₱37.5 million representing 3% of the proceeds from the sale of the 500 hectares of agricultural land;

e. ₱2.4 million representing 3% of the proceeds from the sale of the 80 hectares for the Subic-Clark-Tarlac Expressway (*SCTEX*); and

f. 240 sq. m. homelots to each of the 3,274 families of the FWBs, distributed for free.[40]

The FWBs, represented by the Supervisory Group, *Alyansa ng mga Manggagawang Bukid ng Hacienda Luisita* (AMBALA) and FARM, contradict this HLI position with the claim that in the 16 years that the HLI was operational, their lives grew progressively worse, due mainly to HLI's failure to comply with its promises and obligations under the SDP.

Taking this argument further, FARM opines that the second paragraph of Section 31 (providing for the stock distribution option as a mode of agrarian reform) is unconstitutional, as it violates the intent of Section 4, Article XIII of the Constitution, which recognizes the right of farmers and farmworkers to own, directly or collectively, the lands they till. FARM also claims that this provision contains a suspect classification involving a vulnerable sector protected by the Constitution, as it discriminates against farmers working on corporate farms/*haciendas*.

From the various submitted pleadings,[41] the parties call upon the Court to resolve the following issues:

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[40] *Rollo*, Volume 3, pp. 3694-3695.

[41] The parties submitted the following pleadings:

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I. Whether the private respondents are the real parties-in-interest and have the legal personality to file their petitions before the Department of Agrarian Reform (*DAR*);

II. Whether Section 31 of the CARL, providing for the stock distribution option, is constitutional;

III. Whether the PARC has jurisdiction to recall or revoke the HLI's SDP that it earlier approved;

IV. Whether there is legal or factual basis to revoke the SDP; and

V. Whether LIPCO and RCBC are transferees in good faith.

I submit this Separate Opinion to concur with some of the positions in the *ponencia* and in the other opinions, and to express my own positions, particularly on **the consequences of the illegality of the SDP.**

THE SEPARATE OPINION

I. The private respondent farmer groups are real parties-in-interest

HLI concedes that the private respondent farmer groups, whose members signed and filed the petitions before the DAR, are real parties-in-interest.[42] These groups are the Supervisory

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Petitioner HLI's Memorandum dated September 23, 2010;

b) Memorandum dated September 12, 2010, filed by private respondents AMBALA-Mallari Group, United Luisita Workers' Union, and the Supervisory Group, as represented by Atty. Santoyo;

c) Memorandum dated September 21, 2010, filed by private respondent AMBALA-Galang, as represented by Atty. Pahilga of Sentro Para sa Tunay na Repormang Agraryo Foundation (SENTRA);

d) Memorandum dated September 24, 2010, filed by respondent-intervenor FARM, as represented by Atty. Monsod;

e) Memorandum dated September 23, 2010, filed by public respondents' PARC and DAR, as represented by the Office of the Solicitor General;

f) Petitioner-Intervenor LIPCO's September 23, 2010 Memorandum; and

g) Petitioner-Intervenor RCBC's September 23, 2010 Memorandum.

[42] HLI Memorandum, p. 73.

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Group (represented by Julio Zuniga and Windsor Andaya) and AMBALA (represented by Rene Galang and Noel Mallari). FARM (represented by Renato Lalic), a newly-formed organization of former AMBALA members, sought to intervene in the proceedings before the Court to assail the constitutionality of Section 31 of the CARL.

At the same time, HLI cautions that their interest in this case does not necessarily characterize them as "farmers and regular farmworkers" who are entitled to landownership under the CARL.[43] HLI argues that the "farmers and regular farmworkers" entitled to own the lands they till exclude seasonal farmworkers, as the Court ruled in *Carlos O. Fortich, et al. v. Renato C. Corona, et al*.[44] Thus, it posits that the private respondents who are not among its 337 permanent farmworkers[45] cannot be considered as beneficiaries under Section 22 of the CARL.[46]

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[43] *Ibid.*

[44] G.R. No. 131457, August 19, 1999, 312 SCRA 751, 761.

[45] HLI states that it has only 337 permanent farmworkers, of the 10,502 FWBs; HLI Memorandum, p. 74.

[46] Section 22. *Qualified Beneficiaries.* — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;

(b) regular farm workers;

(c) seasonal farm workers;

(d) other farm workers;

(e) actual tillers or occupants of public lands;

(f) collective or cooperatives of the above beneficiaries; and

(g) others directly working on the land.

Provided, however, That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents; and: Provided, further, that actual tenant-tillers in the landholding shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under their program.

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The requirement of standing involves a party's right to present his case and to participate in the proceedings before the court. To have standing, a party must stand to be benefitted or injured by the judgment in the suit, or to be entitled to the avails of the suit;[47] he must have sustained, or will sustain, direct injury as a result of its enforcement.[48] Since the central question in this case involves the validity of the SDOA/SDP, those who stand to be benefited or injured by the Court's judgment on this question are necessarily real parties-in-interest.

The real parties-in-interest as reflected in the pleadings, are the following: (1) those who are signatories of the May 11, 1989 SDOA; and (2) those who are not signatories to the May 11, 1989 SDOA but, by its terms, are nevertheless entitled to its benefits. The SDOA included as its qualified beneficiaries those "farmworkers who appear in the annual payroll, inclusive of permanent and seasonal employees, who are regularly or periodically hired by the SECOND PARTY [HLI]."[49] It made no distinction between regular and seasonal farmworkers, and between regular and supervisory farmworkers. All that the SDOA required for inclusion as a beneficiary is that the farmworker appear in HLI's annual payroll, regardless of when he or she began working for HLI.

A basic qualification of a beneficiary shall be his willingness, aptitude and ability to cultivate and make land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

[47] RULES OF COURT, Rule 3, Section 2.

[48] *People v. Vera*, 65 Phil. 56, 89 (1937).

[49] *Rollo*, p. 149.

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Thus, Rene Galang, who started his employment with HLI in 1990 after the SDOA was executed, also possesses standing to participate in this case, since he is considered a qualified beneficiary even if he was not an SDOA signatory like Julio Zuniga, Windsor Andaya and Noel Mallari. Although FARM is an organization created only after the present petition was filed with the Court, its members are qualified beneficiaries of the SDOA and, like Rene Galang, are also clothed with the requisite standing.

The Court cannot test a party's standing based on who should be considered qualified beneficiaries under Section 22 of the CARL, which, as HLI argued on the basis of our ruling in *Fortich*,[50] excludes seasonal workers. Section 22 of the CARL, in relation to the *Fortich* ruling, will find application only if the Court rules that the SDOA/SDP is illegal and confirms the compulsory coverage and distribution of *Hacienda Luisita* under the CARL. Before any such ruling is made, the application of a Section 22/*Fortich*-based standard of standing will not only be premature; it will also deny due process to those who qualify as beneficiaries under the SDOA/SDP but who may not qualify as such under the *Fortich* standard. Thus, HLI's arguments on this matter are irrelevant to the question of standing.

RCBC and LIPCO's intervention is permissible based on the standards provided under Section 1, Rule 19 of the Rules of Court:

> Section 1. *Who may intervene*. — **A person who has a legal interest in the matter in litigation**, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. [Emphasis ours.]

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[50] *Supra* note 44.

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Their interest in this case stems from being the purchasers of 300 hectares of HLI land, which the PARC included in its Notice of Compulsory Coverage. Thus, the Court's resolution of this case will directly affect their right to the purchased lands, as they stand to be stripped of their ownership and possession of these lands.

II. Constitutionality of stock distribution option under the CARL

In the exercise of the power of judicial review over a legislative act alleged to be unconstitutional, the Court must ensure that the constitutional issue meets the following essential requirements:

(1) there is an actual case or controversy;

(2) the constitutional question is raised at the earliest possible opportunity by a proper party or one with *locus standi*; and

(3) the issue of constitutionality must be the very *lis mota* of the case.[51]

I agree that the constitutional issue in the present case fails to comply with the *lis mota* requirement. The settled rule is that courts will refrain from ruling on the issue of constitutionality unless it is truly unavoidable and the issue lies at the core of, or is the core of, the dispute in the case;[52] In other words, the case cannot be resolved unless the constitutional question is passed upon.[53] Equally settled is the presumption of constitutionality that every law carries; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, not one that is doubtful, speculative or argumentative.[54]

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[51] *Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003, 415 SCRA 133.

[52] *Spouses Romualdez v. Commission on Elections*, G. R. No. 167011, April 30, 2008, 553 SCRA 370.

[53] See *Garcia v. Executive Secretary*, G.R. No. 157584, April 2, 2009, 583 SCRA 119.

[54] *Arceta v. Mangrobang*, G.R. No. 152895, June 15, 2004, 432 SCRA 136.

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The present dispute is principally anchored on the alleged grave abuse of discretion that the PARC committed when it revoked HLI's SDP. All the other issues raised, such as the extent of the PARC's jurisdiction, the legality of the SDOA, and LIPCO's and RCBC's rights as transferees of portions of HLI's lands, originate from this determination. In my view (and as Justices Velasco and Sereno also posit), the Court can resolve these issues without having to delve into the constitutionality of the stock distribution option embodied in Section 31 of CARL. Contrary therefore to the Separate Opinion of Chief Justice Renato C. Corona, I see no compelling reason for this Court to consider the constitutional issue. This issue is likewise best left unresolved, given that the CARL has now been superseded by RA 9700[55] and the stock distribution option is no longer allowed by law; not only is a constitutional pronouncement not necessary as discussed above, but such pronouncement may even unsettle what to date are stable stock distribution relationships under this superseded law.

III. The PARC's power to revoke its previous approval of the SDP

I also maintain that the PARC's power and authority to approve the SDP under Section 31 of the CARL includes, by implication, the power to revoke this approval.

The PARC was created *via* Executive Order (EO) No. 229, which provides:

Section 18. *The Presidential Agrarian Reform Council (PARC).* To **coordinate the implementation of the CARP** and to ensure the timely and effective delivery of the necessary support services, there is hereby created the Presidential Agrarian Reform Council

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[55] This law, entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), extending the acquisition and distribution of all agricultural lands, instituting necessary reforms, amending for the purpose certain provisions of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, as amended, and appropriating funds therefore," amended the CARL by removing the stock distribution option as a mode of compliance with the agrarian reform program.

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composed of the **President** as Chairman, and the Secretaries or Heads of the following agencies, as follows:

Department of Agrarian Reform	Vice Chairman
Department of Agriculture	Vice Chairman
Department of Environment and Natural Resources	Vice Chairman
Executive Secretary	Member
Department of Budget and Management	Member
Department of Finance	Member
Department of Justice	Member
Department of Labor and Employment	Member
Department of Local Government	Member
Department of Public Works and Highways	Member
Department of Trade and Industry	Member
Department of Transportation and Communications	Member
National Economic and Development Authority	Member
Land Bank of the Philippines	Member
Presidential Commission on Good Government	Member

The President shall appoint representatives of agrarian reform beneficiaries and affected landowners as members of PARC.

The DAR shall provide the Secretariat for the PARC and the Secretary of Agrarian Reform shall be the Director-General thereof.

The PARC shall formulate and/or <u>implement</u> the policies, rules and regulations necessary to implement each component of the CARP, and may authorize any of its members to formulate rules and regulations concerning aspects of agrarian reform falling within their area of responsibility.

Given this composition and assigned mission, with the President of the Philippines as its Chairperson and the various Department Secretaries as its Vice-Chairpersons, the PARC is undoubtedly

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an administrative body whose level of authority and power is higher than that of the DAR Secretary.

The PARC's **authority to approve the SDP** is expressed in Section 10 of EO No. 229, which provides:

Section 10. *Corporate Landowners*. Corporate landowners may give their workers and other qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the land assets bear in relation to the corporation's total assets, and grant additional compensation which may be used for this [these] purposes. **The approval by the PARC of a plan for such stock distribution, and its initial implementation, shall be deemed compliance with the land distribution requirements of the CARP**.

The CARL preserved the PARC's authority to approve the SDP in its Section 31, which states:

Section 31. *Corporate Landowners.* — Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries, under such terms and conditions consistent with this Act, as they may agree upon, subject to confirmation by the DAR.

Upon certification by the DAR, corporations owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to associations, with respect to their equity or participation.

Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: *Provided*, That the following condition are complied with:

(a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits,

the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

(b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;

(c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and

(d) Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or **the plan for such stock distribution approved by the PARC** within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.

As the PARC has the power and authority to approve the SDP, it also has, by implication, the power to revoke the approval of the plan unless this implied power is expressly, or by a contrary implication, withheld from it by law. This conclusion is consistent with the Court's ruling in *Francisco I. Chavez v. National Housing Authority, et al.*:[56]

Basic in administrative law is the doctrine that a government agency or office has express and implied powers based on its charter and other pertinent statutes. Express powers are those powers granted, allocated, and delegated to a government agency or office by express provisions of law. On the other hand, implied powers are those that can be inferred or are implicit in the wordings of the law or conferred by necessary or fair implication in the enabling act. In *Angara v. Electoral Commission,* the Court clarified and stressed that **when a general grant of power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the**

[56] G.R. No. 164527, August 15, 2007, 530 SCRA 235, 295-296.

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performance of the other is also conferred by necessary implication. It was also explicated that when the statute does not specify the particular method to be followed or used by a government agency in the exercise of the power vested in it by law, said agency has the authority to adopt any reasonable method to carry out its functions.

While the provision does not specify who has the authority to revoke the approval of the stock distribution plan, logic dictates that the PARC be the proper body to exercise this authority. If the approval was at the highest level (*i.e.*, at the level of the PARC), revocation cannot be at any other level; otherwise, the absurd situation of a lower level of authority revoking the action of a higher level will result.

In line with the power granted to the PARC and the DAR to issue rules and regulations to carry out the objectives of the CARL,[57] the DAR issued Administrative Order (AO) No. 10-1988 or the "Guidelines and Procedures for Corporate Landowners Desiring to Avail Themselves of the Stock Distribution Plan Under Section 31 of R.A. 6657 and Superseding Department of Agrarian Reform Administrative Order No. 4-1987." The pertinent provisions of the guidelines provide:

Section 10. *Disposition of Proposal* — **After the evaluation of the stock distribution plan** submitted by the corporate landowner-applicant to the Secretary of Agrarian Reform, he shall **forward the same with all the supporting documents to the Presidential Agrarian Reform Council (PARC),** through its Executive Committee, with his recommendation for final action.

Section 11. *Implementation — Monitoring of Plan* — The approved stock distribution plan shall be **implemented within three (3) months** from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded

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[57] Section 49 of the CARL states: "The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation."

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in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the stock distribution plan.

Upon completion, the corporate landowner-applicant shall be issued a Certificate of Compliance. The Secretary of Agrarian Reform or his designated representatives shall strictly monitor the implementation to determine whether or not there has been compliance with the approved stock distribution plan as well as the requirements of the CARP. For this purpose, the corporate landowner-applicant shall make available its premises for ocular inspection, its personnel for interview, and its records for examination at normal business hours.

Section 12. ***Revocation of Certificate of Compliance*** — Non-compliance with any of the requirements of Section 31 of RA 6657, as implemented by this Implementing Guidelines shall be **grounds for the revocation of the Certificate of Compliance** issued to the corporate landowner-applicant.

Section 13. *Reservation Clause* — Nothing herein shall be construed as precluding the **PARC** from **making its own independent evaluation** and **assessment of the stock distribution plan** of the corporate landowner-applicant and in prescribing other requirements.

Thus, the corporate landowner is obliged under Section 11 of this AO to implement the SDP within three months after the plan is approved by the PARC. A Certificate of Compliance follows the execution of the SDP to confirm its compliance with statutory and regulatory requirements. Compliance, however, is not a one-time determination; even after the approval of the SDP, the Secretary of Agrarian Reform, or his designated representatives, is under the obligation to strictly monitor the implementation of the SDP to ensure continuing compliance with the statutory (the CARL) and regulatory (the AO) requirements.

Section 12 of the AO confirms that the Certificate of Compliance can still be revoked even after its issuance, if the corporate landowner is found violating the requirements of Section 31 of the CARL. If this authority is granted ***after*** the corporate landowner has been issued a Certificate of Compliance, with more reason should the approval of the SDP be subject to revocation ***prior*** to the issuance of a Certificate of Compliance.

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At that prior point, the PARC has not even accepted and approved compliance with the SDP as legally satisfactory. While the rules do not expressly designate the PARC as the entity with the authority to revoke, the PARC nevertheless is granted the continuing authority, under Section 18 of EO No. 229, to implement the policies, rules and regulations necessary to implement each component of the CARP. This grant is a catch-all authority intended to cover all the implicit powers that the express grants do not specifically state, and must necessarily include the power of revocation.

IV. The SDP is null and void for being contrary to law

Along with my colleagues, I consider HLI's SDP/SDOA to be null and void because its terms are contrary to law. I specifically refer to two main points of invalidity. *First* is the "man days" method the SDP/SDOA adopted in computing the number of shares each FWB is entitled to get; and *second* is the extended period granted to HLI to complete the distribution of the 118,391,976.85 shares, which violates the compliance periods provided under Section 11 of AO No. 10-1988.

Under the SDOA/SDP, the qualified FWBs will receive, at the end of every fiscal year, HLI shares based on the number of days that they worked for HLI during the year. This scheme runs counter to Section 4 of the DAR AO No. 10-1988, which states:

> Section 4. Stock Distribution Plan. — The stock distribution plan submitted by the corporate-landowner applicant shall provide for the **distribution of an equal number of shares of stock** of the same class and value, with the same rights and features as all other shares, **to each of the qualified beneficiaries**. This distribution plan in all cases, shall be at least the minimum ration for purposes of compliance with Section 31 of RA 6657.
>
> On top of the minimum ration provided under Section 3 of this Implementing Guideline, corporate landowner-applicant may adopt additional stock distribution schemes taking into account factors such as rank, seniority, salary, position and other circumstances which may be deemed desirable as a matter of sound company policy.

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The "man days" method of determining the shares to be distributed to each FWB is contrary to the mandate to distribute equal number of shares to each FWB, and is not saved by the prerogative of the landowner to adopt distribution schemes based on factors desirable as a matter of sound company policy. The "man days" method leaves it entirely to the unregulated will of HLI, as the employer, to determine the number of workers and their working hours, that in turn becomes the basis in computing the shares to be distributed to each worker. The workers earn shares depending on whether they were called to work under an uncertain work schedule that HLI wholly determines. Under this set-up, intervening events that interrupt work and that are wholly dictated by HLI, effectively lessen the shares of stocks that a worker earns. This is far from the part-ownership of the company at a given point in time that the CARL and its implementing rules envisioned.

The 30-year distribution period, on the other hand, violates the three month period that Section 11 of AO No. 10-1988 prescribes in the implementation of the distribution scheme:

> Section 11 Implementation — Monitoring of Plan — **The approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC** and **the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books** and submitted to the Securities and Exchange Commission (SEC) **within sixty (60) days from the said implementation** of the stock distribution plan.

Contrary to this provision, the HLI's SDP/SDOA authorized a slow incremental distribution of shares over a 30-year period. Thus, FWB participation, particularly over the early years, was minimal and the unearned and undistributed shares remained with HLI. This scheme totally runs counter to the concept of making the FWBs part-owners, through their stock participation, within the time that Section 11 requires for the implementation of the stock distribution scheme. Stated more bluntly, the FWBs largely remained farmers while the land supposedly subject to land reform remained with HLI.

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These SDP provisions, among others, prejudiced the FWBs and denied them of their rights under the law. Consequently, PARC Resolution No. 2005-32-01 is legally correct in revoking the SDP of HLI.[58]

The recall/revocation of the SDP carried with it the revocation of the SDOA, since the two are essentially the same. The SDOA is the contract between the FWBs and the landowners (HLI/Tadeco) that was embodied and ***made the very core*** of the SDP — the proposal submitted by HLI for the PARC's approval as compliance with the CARL. The illegality that permeates the SDP (leading to PARC's decision to revoke it) therefore also extends to the SDOA. If we recognize that the SDP is different from the SDOA, as the *ponencia* suggests, inconsistency and absurdity would result.

a. Consequences of the Revocation of SDP/SDOA

The revocation of the SDP/SDOA carries two significant consequences.

The ***first*** is the compulsory coverage of HLI agricultural lands by the CARP, as the PARC ordered through its Notice of Coverage. This coverage should cover the whole 4,915.75 hectares of land subject of the SDOA, including the 500 hectares later sold to LIPCO, RCBC and the LRC, and the 80 hectares purchased by the government as part of the SCTEX. As discussed below, the implementation of this coverage should be subject to the validity of the subsequent dealings involving specific parcels of the covered land.

The ***second*** is the invalidity from the very beginning of the SDP/SDOA, both in its terms and in its implementation. Thus, **mutual restitution should take place**, *i.e.*, the parties are bound to return to each other what they received on account of the nullified SDP/SDOA. It is on this latter point that I diverge from the majority's ruling on the effects of the nullification of the SDP/SDOA.

These consequences are separately discussed below.

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[58] *Rollo*, p. 101.

b. The compulsory CARP coverage and extent of Notice of Coverage.

b. 1. Basis of the compulsory CARP coverage

Section 31 is clear and categorical on the consequence of the revocation – the agricultural land of the corporate owners or corporation shall be subject to compulsory coverage under the CARL. The DAR AO No. 10-1988 effectively defines the corporate land covered — the land actually devoted to agriculture — as this is the basis for the allocation of shares to FWBs. Thus, as discussed below, compulsory coverage upon the failure of the stock distribution plan shall extend to the whole of HLI's agricultural lands, subject only to exceptional exclusions that may be recognized.

b. 2. Exclusion from Notice of Coverage based on intervening developments

A seeming problem, in light of the intervening conversion to industrial use and the sale of 500 hectares of converted land to third parties, is the extent of actual implementation of PARC's Notice of Coverage.

As narrated above, HLI applied for the conversion to industrial use of 500 hectares of the original 4,915.75 that the SDOA covered. **Significantly, the application was made with the consent and approval of the FWBs, as expressed in their Manifestation of Support**.[59] That the landowner and/or the FWBs can request for conversion is a possibility that the law made allowance for. Section 65 of the CARL in this regard states:

> Section 65. Conversion of Lands. — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application, of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification

[59] *Supra* note 15.

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or conversion of the land and its disposition; provided, that the beneficiary shall have fully paid its obligation.

The fact of conversion in the present case, however, is not a divisive issue between HLI and the FWBs as the latter consented to and accepted the conversion; they only question their share in the proceeds after the converted lands were sold to third parties. If at all, conversion as an issue rears its head between the PARC and HLI because of the intervening sale of the converted lands and the PARC's Notice of Coverage that, given the invalidity of the SDOA/SDP, should be effective on May 11, 1989 as discussed below. Even the PARC, however, is not in the position to question the fact of conversion as the PARC itself approved the conversion after full compliance with the CARL and the DAR's applicable regulations;[60] the PARC's question arises only because of its apparent view that compulsory CARP coverage has primacy over all dealings involving HLI agricultural lands.

In these lights, the validity of the transfer of the converted lands to LIPCO, RCBC, LRC (through Centennary) and SCTEX, depends on the validity of the transfers made and on how they are affected by the agrarian character and the FWB ownership of the transferred lands; the validity of the conversion is a given or is at least a non-material consideration.

As the undisputed facts show, the converted lands are titled properties that the purchasers LIPCO, RCBC and the government acquired in a series of documented and fully examined transactions. In these dealings, a significant consideration is the good faith of the purchasers who, in the usual course, can rely on the presented certificate of title, subject only to the requirements of good faith.[61]

A purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or

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[60] See *Ros v. DAR*, G.R. No. 132477, August 31, 2005, 468 SCRA 471 and *Alarcon v. CA*, 453 Phil. 373 (2003).

[61] See *Republic v. Orfinada, Sr.*, G.R. No. 141145, November 12, 2004, citing *Legarda v. CA*, G.R. No. 94457, December 16, 1997, 280 SCRA 642, 679.

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an interest in, such property and pays a full and fair price for the property at the time of purchase, or before he has notice of some other person's claim or interest in the property.[62] The law requires, on the part of the buyer, lack of notice of a defect in the title of the seller, and payment in full of the fair price at the time of the sale or prior to having notice of any defect in the seller's title.[63]

Every registered owner and every subsequent purchaser for value in good faith holds the title to the property free from all encumbrances except those noted in the certificate. Hence, a purchaser is not required to explore further than what the Torrens title on its face indicates in its inquiry for hidden defects or inchoate rights that may defeat his right to the property.[64] Every person dealing with registered land may safely rely on the correctness of the certificate of title issued, and the law does not oblige him to go behind the certificate to determine the condition of the property.[65]

To determine whether LIPCO was a purchaser in good faith, I examined the certificate of title of Centennary Holdings, Inc. at the time of LIPCO's purchase.[66] Notably, the only annotations and/or restrictions in the title were (a) the Secretary's Certificate in favor of Teresita Lopa and Shintaro Murai;[67] (b) the sale in

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[62] *Centeno v. Spouses Viray*, 440 Phil. 881, 885 (2002).

[63] *De Leon v. Ong*, G.R. No. 170405, February 2, 2010, 611 SCRA 381.

[64] *PNB v. Intermediate Appellate Court*, G.R. No. 71753, August 25, 1989, 176 SCRA 736.

[65] *Cabuhat v. Court of Appeals*, G.R. No. 122425, September 28, 2001, 366 SCRA 176.

[66] *Rollo*, pp. 3375-3376.

[67] E-38-18798; Kind: Secretary's Certificate in favor of Teresita C. Lopa. Cond: By virtue of which Teresita C. Lopa is hereby authorized and empowered to sign, execute and deliver whatever deeds, agreements and other documents as may be necessary to consummate the sale for and in behalf of the corporation, as per Doc. No. 271; p-56; bk. III; s-1997 of Not. Pub. A.M. Lopez.

Date of instrument – Nov. 11, 1997

Date of inscription – Aug. 3, 1998 at 8:20 a.m.

GUERRERO E. CAMPOS, Reg. of Deeds

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favor of LIPCO for ₱750 million;[68] and (c) the conversion of the property from agricultural to industrial and residential use.[69] None of these annotations suggests any defect in Centennary's title, nor do they place potential buyers on notice that some other person had a claim or interest in the property.

While LIPCO may have known that the property it was purchasing was covered by an SDOA between HLI and its FWBs, the coverage, by itself, is not enough to constitute bad faith on LIPCO's part. The property LIPCO purchased was covered by a validly issued DAR Conversion Order, which served to assure LIPCO that the property it was purchasing had already been approved for sale and industrial development, and thus already lies **outside CARP coverage.** Reliance on the Conversion Order is strengthened by the numerous government issuances which all classified these lands as industrial land to be developed as a Special Economic Zone.[70]

E-38-18799; Kind: Secretary's Certificate in favor of Shintaro Murai. Cond: By virtue of which Shintaro Murai is hereby authorized to sign, execute and deliver the Deed of Absolute Sale and whatever deeds and agreements, and other documents, as may be necessary to consummate the said Deed of Absolute Sale for and in behalf of the corporation, as per Doc. No. 277; p-51; bk. III; s-1997 of Not. Pub. A.M. Lopez.

Date of instrument – Nov. 11, 1997

Date of inscription – Aug. 3, 1998 at 8:20 a.m.

[68] E-38-18800: Kind: Sale; in favor of LUISITA INDUSTRIAL PARK CORPORATION. Cond: This title is hereby cancelled by virtue of the aforementioned document and for the sum of (₱750,000,000.00) and in lieu thereof TCT 310986 is issued on page 186 Vol. T-1546 as per Doc. No. 22; p-6; bk. II; s-1998 of Not. Pub. E.C. Dela Merced Jr.

Date of instrument – Jul. 30, 1998

Date of inscription – Aug. 3, 1998 at 8:20 a.m.

[69] E-38-18805: Kind: Order. in favor of Hacienda Luisita, Incorporated, rep. by Mr. Pedro Cojuangco. Cond: By virtue of an order of DAR Quezon City, the herein property is hereby converted from Agricultural to Industrial and residential uses.

Date of instrument – Aug. 14, 1996

Date of inscription – Aug. 3, 1998 at 8:20 a.m.

[70] These government issuances include:

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In the case of RCBC, LIPCO's certificates[71] covering the parcels transferred to RCBC through a *dacion en pago*, contained the following annotations: (a) the Deed of Restrictions;[72] (b) the

a. Resolution No. 392, dated December 11, 1996, of the Sanguniang Barangay of Municipality of Tarlac, recognizing LIPCO's plan to establish a 300 hectare industrial estate in the municipality of Tarlac (*Rollo*, Volume 3, p. 3377);

b. Board of Investments (BOI) Certificate of Registration No. 96-020 dated December 20, 1996, recognizing LIPCO as duly registered with the BOI (*Id.* at 3384);

c. Resolution No. 97-202 issued by the Philippine Economic Zone Authority (PEZA), approving LIPCO's application as a mixed economic zone, as well as proclaiming the 300 hectares as a special economic zone to be known as Luisita Industrial Park 2 (*Id.* at 3385-3388);

d. Certificate of Registration No. 00794 issued by the HLURB, recognizing the Luisita Industrial Park 2 project as an industrial subdivision (*Id.* at 3398); and

e. Presidential Proclamation No. 1207 issued by President Ramos, declaring the 300 hectares of the converted industrial land as a Special Economic Zone (*Id.* at 3400-3402).

[71] *Rollo*, pp. 3475-3482.

[72] Both TCT Nos. 365800 and 365801 contained the following annotation:

-conditions-

1. USE AND OCCUPANCY

1.1 The Property and its improvements shall be used solely as an industrial estate for non-polluting, general, industrial and manufacturing activities provided that such activities are confined within a [the] buildings and do not pollute, contaminate or contribute noxious fumes, smoke or dust, offensive odor, disturbing noise or vibration, and excessive heat to the surrounding environment nor contain a hazard potential due to the nature of the products, materials or processes involved, nor discharge any and all other pollutants and substances which may contaminate the air, the water, the soil and the environment.

1.2 Without the prior written consent of Hacienda Luisita, Inc., the Property or any part thereof shall not be used as an open field depot or dump for depositing and/or sale of unreconditioned, unassembled and/or unremodelled surplus vehicles, machineries, equipment or scrap and or any other unreconditioned or unprocessed second hand materials, goods or items, dormitory or for residential purposes, vegetables/fruit plantation, experimental farms such as fishponds, and the establishment of residential projects, commercial establishments including hotel, shopping mall, retail establishment, food stores, and other uses other than mentioned in 1.1 above.

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Secretary's Certificate in favor of Koji Komai and Kyosuke Nori;[73] and (c) the Real Estate Mortgage in favor of RCBC, for ₱300 million.[74] Again, nothing in these annotations would lead

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2. SEWER — The developer is required to build a water and sewerage treatment plant for both domestic and industrial water for factories of the industrial park.

3. DRAINAGE — all drainage system shall comply with the drainage mater plan of Hacienda Luisita, Inc. Storm water shall drain into existing drainage main lines. All industrial or factory waste or by products harmful to living matters, having an obnoxious odor, and/or detrimental to the proper maintenance of the river, should first be primarily treated according to government regulations before.

4. GAS STATIONS/FUEL PUMPS — No gas stations or fuel pumps to service the general public shall be constructed, operated or established within the industrial park.

5. ADVERTISING SIGNS — Advertising signs shall conform with the aesthetic appearance of the estate. It shall be limited to those necessary for the business carried on within the property and shall be the least obnoxious in character and design.

6. POWER PLANT — No electric generating power plant shall be established on the Property without the prior written consent of Hacienda Luisita, Inc., which consent shall not be unreasonably withheld:

7. TERM AND ENFORCEMENT OF RESTRICTIONS — The restriction, easements and reservation mentioned hereinabove shall be valid and run with the land for a period of 50 years from 31 Jan. 1988 and compliance thereto may be enforced by court action either by Hacienda Luisita, Inc. or by any property owner in the industrial estate or both, as well as by their respective successors and assigns, provided, however, that public utility or service entities may enforce their easement rights as provided for herein independently of any other party or parties.

[73] E-42-3728; Kind: SECRETARY'S CERTIFICATE. in favor of KOJI KOMAI and KYOSUKE HORI. Cond. By virtue of which, KOJI KOMAI and KYOSUKE HORI are hereby authorized and empowered to sign, for and in behalf of the Corporation and subject to all other conditions specified in Doc. No. 391; p-80; bk. III; s-1999 of Not. Pub. EUFROCINO C. DELA MERCED, JR. of Makati City, M.M.

Date of instrument – Aug. 19, 1999

Date of inscription – Feb. 26, 2002 at 9:20 a.m.

[74] E-42-3729; Kind: REAL ESTATE MORTGAGE (REM) In favor of RIZAL COMMERCIAL BANKING CORPORATION (RCBC). Cond. The property herein described is hereby Mortgaged to guarantee the payment for

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possible buyers or transferees like RCBC to question LIPCO's right, as owner, to transfer these properties.

I likewise find that RCBC sufficiently demonstrated extraordinary diligence in purchasing part of the acquired lands from LIPCO. Before it acquired these lands, RCBC reviewed and inspected LIPCO's certificates of title and other relevant documents to trace the origin of LIPCO's titles to ascertain the nature of the property.[75] It likewise conducted ocular inspections on the property, and confirmed that the property was not only in LIPCO's possession; more than this, nobody was occupying the property.[76] As with LIPCO, the fact that the property had already been converted by the DAR assured RCBC that the property it was purchasing was no longer agricultural land and was, therefore, outside CARP coverage.

Aside from the good faith both LIPCO and RCBC demonstrated, they paid the full and fair price for their purchases. LIPCO paid Centennary the total amount of ₱750 million for the 300 hectares of land.[77] Likewise, RCBC received approximately 184 hectares of land from LIPCO in exchange for LIPCO's debt amounting to ₱431.7 million.[78]

A critical point in these transfers, in light of the invalidity of the SDOA/SDP, is the consent of the real owners of the transferred properties — the respondent FWBs in the present case. As previously mentioned, their main objection does not relate to the conversion of the 500 hectares to industrial use; neither is

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the sum of THREE HUNDRED MILLION (₱300,000,000.00) Pesos, Phil. Currency with interest thereon and subject to all other conditions specified in Doc. No. 254; p-52; bk. 18; s-1998 of Not. Pub. JEROME O. SARTE, of Makati City, M.M.

Date of instrument – October 26, 1998

Date of inscription – Feb. 26, 2002 at 9:20 a.m.

[75] *Rollo*, p. 4262.

[76] *Id.* at 4264.

[77] *Id.* at 1499-1509.

[78] *Id.* at 1523-1527.

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it on the transfer of the property to LIPCO and RCBC. The thrusts of their objections are clear from a survey of the pleadings. What the private respondents strongly object to is the share they received from the transfers; they argue that they are entitled to more than the trifling 3% of the proceeds of the sale that HLI gave them. Thus, the respondent FWBs — as the owners of the converted lands at the time of their transfers because of the invalidity of the SDOA/SDP and the compulsory CARP coverage of the lands these instruments cover — at the very least gave their consent and ratified the transfers made. At this point, they only have to receive the price due them on the transactions so that all the elements of the sale, viewed as a contract, can be complete.

Not to be forgotten as an important side consideration, in examining the transfers to LIPCO and RCBC from the point of view of agrarian reform, is the acquired lands' present state of development; they have already been partially developed into an industrial estate — significant portions have been covered by cemented roads, and permanent structures have been erected.[79] As RCBC convincingly argued, it would not be practicable to raze down these permanent structure, and rehabilitate partially developed non-agricultural land so that it can be used for agricultural purposes. As a colleague observed, the DAR Conversion Order[80] itself notes that the converted lands have no source of irrigation and no new irrigation facilities, and would have to be developed in these regards in order to be viable for farming.

Thus, **I totally disagree with the PARC's ruling that the portions sold to RCBC and LIPCO should continue to be included in the CARP's compulsory coverage and should simply be turned over to the qualified beneficiaries.** Although these lands fell under compulsory CARP coverage even before their sale to RCBC and LIPCO, the intervening events that gave

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[79] See RCBC's Memorandum dated September 23, 2010, p. 85, and LIPCO's Memorandum dated September 23, 2010, p. 41.

[80] *Rollo*, pp. 656-657.

rise to legally valid transactions cannot be disregarded in the name of agrarian reform. Whatever remaining objections there may now be (in this case, the sharing of the proceeds of the sales) are simply disputes that do not affect the validity of the underlying transactions, and can be resolved as issues in the present case.

The land transferred to the government, for use as part of the SCTEX has not at all been discussed in the proceedings of the case[81] and does not appear to have been covered by any conversion order. Presumably, however, the transfer was pursuant to the government's exercise of the power of eminent domain — **an overriding act of government** that carries the presumption of regularity unless otherwise proven. I mention this aspect of the HLI properties because of its potential materiality. In the exercise of the power of eminent domain, the government must necessarily pay just compensation to the owner. The FWBs, as owners at the time of the expropriation because of the land's prior compulsory coverage under the CARP, should receive the full amount that the government paid.

The remaining 200 hectares (of the original 500 hectares converted from agricultural to industrial use with the DAR's approval) appear to be a big gaping black hole in the attendant facts of this case. They appear to have been sold by HLI to Luisita Realty.[82] The latter, however, did not intervene in this case and likewise did not assail PARC Resolution No. 2005-32-01, or the DAR's Notice of Coverage order. On the one hand, this silence and omission may be argued to mean acquiescence with the PARC decision to place the land under the compulsory CARP coverage. On the other hand, the sale to Luisita Realty is part and parcel of the series of transactions that, for the reasons given above, cannot and should not now be questioned if Luisita Realty is similarly situated as LIPCO and RCBC.

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[81] Although HLI asserts that it distributed 3% of the ₱80 Million that the government paid for the land used for the SCTEX.

[82] *Rollo*, Volume 3, pp. 3753-3758.

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I opt for the latter view and for giving LRC the full opportunity to present its case before the DAR at the implementation stage of this Decision. I reason out that the failure of Luisita Realty to actively intervene at the PARC level and before this Court does not really affect the intrinsic validity of the transfer made in its favor if indeed it is similarly situated as LIPCO and RCBC. Accordingly, a definitive ruling on the transfer of the 200 hectares to Luisita Realty is now premature to make, and should be referred to the DAR for its determination.

b.3. HLI is entitled to just compensation based on the covered land's 1989 value.

Since the land is subject to compulsory coverage under the CARL, **HLI is entitled to just compensation**. For purposes of just compensation, the taking should be reckoned not from the Court or the PARC's declaration of nullity of the SDP, but from May 11, 1989 — when the invalid SDOA/SDP was executed for purposes of compliance with the CARL's requirements.

To repeat, **May 11, 1989** is the point in time when HLI complied with its obligation under the CARL as a corporate landowner, through the stock distribution mode of compliance.[83] This is the point, too, when the parties themselves determined — albeit under a contract that is null and void, but within the period of coverage that the CARL required and pursuant to the terms of what this law allowed — that compliance with the CARL should take place. From the eminent domain perspective, this is the point when the deemed "taking" of the land, for agrarian reform purposes, should have taken place if the compulsory coverage and direct distribution of lands had been the compliance route taken. As the chosen mode of compliance was declared a nullity, the alternative compulsory coverage (that the SDOA was intended to replace) and the accompanying "taking" should thus be reckoned from May 11, 1989.

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[83] Section 31 of the CARL provides: x x x Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act.

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The FWBs should, therefore, be considered as entitled to the ownership of the land beginning May 11, 1989, although HLI's possession and control, *as an undisputed reality independently of the SDOA*, continue up to the time of the PARC decision (which we hereby affirm with modification) is implemented. The DAR, as the implementing agency on agrarian reform cases, shall determine the amount of just compensation due HLI, computed from May 11, 1989, and shall likewise be tasked with the adjustment of the parties' financial relationships flowing from their agrarian relations and from the intervening events that followed the voided SDOA. In the process of adjusting and settling these claims, the parties are encouraged to employ mediation and conciliation techniques, with DAR facilitating the proceedings.

In determining just compensation, the DAR should find guidance from Section 17 of the CARL, which states:

> Section 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Lest the matter of interest on the compensation due be a delaying feature of the implementation, I maintain that although HLI is entitled to just compensation based on the land's value in 1989, it cannot be awarded any interest.

Jurisprudence holds that when property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value, to be computed from the time the property is taken up to the time compensation is actually paid or deposited with the court.[84]

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[84] *Apo Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, citing *Republic v. Court of Appeals*, G.R. No. 146587, July 2, 2002, 383 SCRA 611.

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In the present case, HLI never lost possession and control of the land under the terms of the SDOA. This is an actual and corporate reality (not simply a consequence of the void SDOA) that the Court cannot ignore. It is only upon the implementation of this Court's decision, partially affirming PARC Resolution No. 2005-32-01 (placing HLI lands under compulsory coverage of the land acquisition scheme of the CARL), that HLI will be deprived of its possession. Thus, no interest can be due from the just compensation that the DAR shall determine. On the contrary, and as discussed below, HLI should pay rentals to the FWBs for its continued possession and control of the land from May 11, 1989 until its turn over.

b.4. The qualified FWBs are entitled to actual possession of land except the lands legally transferred to LIPCO, RCBC, and the government

The land subject to agrarian reform coverage under the terms of the CARL, as ordered by the DAR and confirmed by the PARC, covers the entire 4,915.75 hectares of agricultural land subject of the SDOA, including the 300 hectares later sold to LIPCO and RCBC, the 200 hectares sold to Luisita Realty, and the 80 hectares purchased by the government to form part of the SCTEX. ***However, the FWB ownership, based on agrarian reform coverage, should yield to the sale and transfer of the acquired lands — the 380 hectares sold — since these were validly acquired by LIPCO, RCBC and SCTEX, as discussed above.***[85]

Since the sale and transfer of these acquired lands came after compulsory CARP coverage had taken place, **the FWBs are entitled to be paid for the 300 hectares of land transferred to LIPCO based on its value in 1989**, not on the ₱750 million selling price paid by LIPCO to HLI as proposed by the *ponencia*. This outcome recognizes the reality that the value of these lands

[85] With respect to the 80 hectares acquired for the SCTEX, note that these were acquired by the government so that the acquisition carries the presumption of regularity.

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increased due to the improvements introduced by HLI, specifically HLI's move to have these portions reclassified as industrial land while they were under its possession.[86] Thus, unless it is proven that the ₱750 million is equivalent to the value of the land as of May 11, 1989 and excludes the value of any improvements that may have been introduced by HLI, I maintain that the land's 1989 value, as determined by the DAR, should be the price paid to the FWBs for the lands transferred to LIPCO and RCBC.

On the other hand, **the FWBs are entitled to be paid the full amount of just compensation that HLI received from the government for the 80 hectares of expropriated land forming the SCTEX highway**. What was transferred in this case was a portion of the HLI property that was not covered by any conversion order. The transfer, too, came after compulsory CARP coverage had taken place and without any significant intervention from HLI. Thus, the whole of the just compensation paid by the government should accrue solely to the FWBs as owners.

I note that complications may arise in adjusting the parties' relationships with respect to the sale of the acquired lands, as another party — the Land Bank of the Philippines — enters the picture as the entity that advances the payment of lands distributed to FWBs under land reform.[87] The DAR, as the agency tasked with the valuation of the CARL-covered lands and the general implementation of land reform, must take the interests of three parties into consideration. For purposes of this adjustment, the DAR should apply ***the principles of set-off or compensation*** whenever applicable,[88] based on the rulings, guidelines and parameters of the Court's decision.

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[86] *Rollo*, pp. 651-664.

[87] Section 64 of the CARL provides:

Section 64. *Financial Intermediary for the* CARP. — The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall ensure that the social justice objectives of the CARP shall enjoy a preference among its priorities.

[88] Legal compensation is grounded on the Civil Code of the Philippines, the pertinent provisions of which are quoted below:

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b.5. HLI must pay the qualified FWBs yearly rent for the use of the land from 1989

Since land reform coverage and the right to the transfer of the CARL-covered lands accrued to the FWBs as of May 11, 1989, **HLI — which continued to possess and to control the covered land — should pay the qualified FWBs yearly rental** for the use and possession of the covered land up to the time HLI surrenders possession and control over these lands.[89] As a

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Article 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

Article 1279. In order that compensation may be proper, it is necessary:

(1)That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2)That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3)That the two debts be due;

(4)That they be liquidated and demandable;

(5)That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

[89] Art. 448. **The owner of the land on which anything has been built, sown or planted in good faith, shall have the right** to appropriate as his own the works, sowing or planting, **after payment of the indemnity provided for in Articles 546** and 548, **or to oblige the one who built or planted to pay the price of the land,** and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity.

The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (361a)

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Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, **the person who has defeated him in the possession having the option** of refunding the amount of the expenses or **of paying the increase in value which the thing may have acquired by reason thereof**.

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detail of land reform implementation, the authority to determine the appropriate rentals belongs to the DAR, using established norms and standards for the purpose. Proper adjustment, of course, should be made for the sale of the acquired lands to LIPCO and to the government as no rentals can be due for these portions after their sale.

The *ponencia* objects to the imposition of rental fee on HLI:

> [T]he income earned by the corporation from its possession and use of the land ultimately redounded to the benefit of the FWBs based on its business operations in the form of salaries, benefits voluntarily granted by HLI and other fringe benefits under the CBA. There would be double compensation if HLI is still required to pay rent for the use of the land in question.[90]

The objection's logic, unfortunately, is flawed. That the FWBs, as owners of the land, are entitled to rent for HLI's possession and use does not preclude them from receiving salaries and benefits for work they performed on the land for HLI. To put it simply, the FWBs are entitled to the rent as owners of the land, and to the salaries and benefits as employees of HLI which had control and possession of the land and which conducted business operations based on the control and possession it enjoyed.

Parenthetically and considering the lapse of more than 10 years from the "taking" of the *Hacienda Luisita*, I bring to the parties' attention Section 27 of the CARL which authorizes the FWBs to sell the lands acquired by them under the CARP:

> SEC. 27. *Transferability of Awarded Lands*. — Lands acquired by beneficiaries under this Act 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: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the *barangay*

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[90] J. Velasco's Reply, pp. 4-5.

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where the land is situated. The Provincial Agrarian Coordinating Committee (PARCCOM), as herein provided, shall, in turn, be given due notice thereof by the BARC.

If the land has not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land.

Under this provision, the qualified FWBs who are no longer interested in owning their proportionate share of the land may opt to sell it to LBP, who in turn can sell it to HLI and LRC, in order not to disrupt their existing operations. The Court leaves it to the parties to avail of Section 27 in the process of adjusting and settling their claims.

b.6. The DAR must identify the qualified FWBs

As a last point on compulsory CARP coverage, the beneficiaries who deserve to participate in the distribution of HLI land should be those qualified as of May 11, 1989 under the standards specified by Section 22 of the CARL, which provides:

Qualified Beneficiaries. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;
(b) regular farm workers;
(c) seasonal farm workers;
(d) other farm workers;
(e) actual tillers or occupants of public lands;
(f) collectives or cooperatives of the above beneficiaries; and
(g) others directly working on the land.

This question is for the DAR to resolve and is without prejudice to agreements the HLI and the FWBs may arrive at before the DAR. As a starting point, the DAR should use the list of qualified FWBs that Tadeco applied in 1989 when it sought the approval of its SDP.

c. Consequences of SDOA/SDP Invalidity.

c.1. The Operative Fact Doctrine is not applicable

While the *ponencia* affirms the revocation of the SDP, it declares that it "cannot close its eyes to certain '**operative facts**' that had occurred in the interim [the period between PARC's approval of the SDP up to its revocation]. x x x the revocation must, however, give way to the right of the original 6,296 qualified FWBs to choose whether they want to remain as HLI stockholders or not. The Court cannot turn a blind eye to the fact that in 1989, 93% of the FWBs agreed to the SDOA (also styled as the MOA) which became the basis of the SDP approved by PARC x x x." The *ponencia* justifies the application of the operative fact doctrine, "since the operative fact principle applies to a law or an **executive action**, the application of the doctrine to the [nullification of] PARC Resolution No. 89-12-2 which is an executive action is correct."[91]

The *ponencia's* view proceeds from a misinterpretation of the term "executive action" to which the operative fact doctrine may be applied.[92]

The operative fact doctrine applies in considering the effects of a **declaration of unconstitutionality of a *statute* or a rule issued by the Executive Department that is accorded the same status as a statute.** The "executive action," in short, refers to those issuances promulgated by the Executive Department

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[91] Justice Presbitero J. Velasco, Jr.'s Reply to Separate Opinion of Chief Justice Renato Corona, Reflections (Concurring and Dissenting) of Justice Arturo D. Brion, and Reflections of Justice Maria Lourdes P.A. Serreno, p. 4.

[92] See *Francisco I. Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007, 530 SCRA 235; *De Agbayani v. Philippine National Bank*, No. L-23127, April 29, 1971, 38 SCRA 429.

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pursuant to their quasi-legislative or rule-making powers. Its meaning cannot be expanded to cover just about any act performed by the Executive Department, as that would be to negate the rationale behind the doctrine.

Aside from being a principle of equity, the Court is also keenly aware that an underlying reason for the application of the operative fact doctrine is the presumption of constitutionality that statutes carry. Rules and regulations promulgated in pursuance of the authority conferred upon the administrative agency by law, partake of the nature of a statute and similarly enjoy the presumption of constitutionality.[93] Thus, it is only to this kind of executive action that the operative fact doctrine can apply.[94]

The SDOA/SDP is neither a statute nor an executive issuance but, as mentioned, is a contract between the FWBs and the landowners. **A contract stands on a different plane than a statute or an executive issuance. When a contract is contrary to law, it is deemed void *ab initio*.** It produces no legal effects whatsoever, in accordance with the principle *quo nullum est nullum producit effectum*.[95] Contracts do not carry any presumption of constitutionality or legality that those observing the law rely upon. For this reason, the operative fact doctrine applies only to a declaration of unconstitutionality of a statute or an executive rulemaking issuance, conferring legitimacy upon past acts or omissions done in reliance thereof prior to the

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[93] Ruben E. Agpalo, *Administrative Law, Law on Public Officers and Election Law* (2005 ed.), p. 57, citing *People v. Maceren*, 79 SCRA 450 (1977).

[94] Hardly was there an instance that the Court applied the operative fact doctrine in considering the effects of nullifying an executive act done not pursuant to the exercise of quasi-legislative power. Majority of the cases found the doctrine applicable in considering the effects of a declaration of unconstitutionality of a statute or an administrative issuance. See the cases of *Corominas, Jr. v. Labor Standards Commission*, No. L-14837, June 30, 1961, 2 SCRA 721; *Municipality of Malabang, Lanao del Sur, et al. v. Benito, et al.*, G.R. No. L-28113, March 29, 1969, 27 SCRA 533; and *De Agbayani v. Philippine National Bank, supra* note 40.

[95] 3 Castan, 7th ed., p. 409, as cited in D. Jurado, *Comments and Jurisprudence on Obligations and Contracts* (2002 ed.), p. 570.

declaration of its invalidity;[96] the statute or the executive issuance, before its invalidity, was an operative fact to which legal consequences attached.

To extend this same principle to an unconstitutional or illegal contract would be to invite chaos into our legal system. It will make the parties a law unto themselves, allowing them to enter into contracts whose effects will anyway be recognized as legal even if the contracts are subsequently voided by the courts. From this perspective, the operative fact doctrine that applies to unconstitutional statutes is clearly not relevant to the present case.

Furthermore, I see no reason to allow the FWBs to remain as stockholders of HLI; maintaining that stock ownership goes against the CARL's declared policy of making the welfare of the farmers and the farmworker the highest consideration, not to mention that the direct constitutional mandate is land ownership by farmers-tillers, not stock ownership in a landowning corporation. To remain as stockholders of an almost-bankrupt corporation certainly will not afford the FWBs the "opportunity to enhance their dignity and improve the quality of their lives."[97] By the HLI's own admission, it shut down its operations in 2004; its audited financial statements as of December 31, 2007 and December 31, 2008 reflect a capital deficiency of ₱1.1 billion and ₱1.63 billion, respectively.

c.2. FWBs must return to HLI the benefits they actually received by virtue of the SDOA

The nullity of a contract goes into its very existence, and the parties to it must generally revert back to their respective situations prior to its execution; restitution is, therefore, in order. **With the SDP being void and without effect, the FWBs should return everything they are proven to have received pursuant to the terms of the SDOA/SDP,** and these include:

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[96] See *Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007, 530 SCRA 235, 333, citing *City of Makati v. Civil Service Commission*, G.R. No. 131392, February 6, 2002, 376 SCRA 248, 257.

[97] CARL, Section 2 – *Declaration of Principles and Policies*.

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1. the 59 million shares of stock of HLI distributed for free;
2. the ₱150 million representing 3% of the gross sales of the production of the agricultural lands;
3. the ₱37.5 million representing 3% of the proceeds from the sale of the 500 hectares of agricultural land (including what may have been received from the expropriation by government of the land used for SCTEX); and
4. the 240 sq. m. homelots distributed for free to each of the 3,274 families of FWBs.[98]

I observe that these are grants that HLI claimed, but have not proven, to have been fully received by the grantees; the evidence on record fails to show that all the FWBs under the SDOA equally received their allotted shares.

During the oral arguments on August 18, 2010, the Court instructed Atty. Gener Asuncion of HLI to submit proof that: (a) HLI gave the 3% share in HLI's total gross sales of the products of the land that the FWBs were entitled to, from 1989 up to 2004, when HLI ceased operations; and (b) HLI distributed the home lots to the FWBs. The records do not show any compliance with the Court's directive as HLI failed to submit any document proving compliance. At most, the records only contain the "Hacienda Luisita, Inc. Salaries, Benefits and Credit Privileges (in Thousand Pesos) Since the Stock Option was Approved by PARC/CARP,"[99] which provided that HLI gave the FWBs a total of ₱150 million as the 3% production share from 1989 to 2005.

Weighing the findings in the DAR Memorandum, dated September 30, 2005, (as affirmed by the PARC) that HLI only *partially* complied with its obligation to provide the FWBs with the 3% production share, against HLI's self-serving allegation that it fully complied with this obligation, I find insufficient basis to conclude (as the *ponencia* does) that "HLI had complied

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[98] *Rollo*, pp. 3694-3695.

[99] *Id.* at 3760-3761.

substantially with this SDOA undertaking and the conversion order."[100]

No substantial proof likewise exists that the FWBs who qualified under the SDOA, received the home lots that HLI claims it distributed. In the same manner, although HLI alleged that it also distributed 3% of the ₱80 million paid for the 80 hectares of land used by the SCTEX complex, no evidence in the records supports this assertion.

All these are aspects of implementation that are up to the DAR to ascertain if the Court will decide on ***starting with a clean slate*** reckoned from 1989 by decreeing that compulsory CARP coverage should start at that point in time, and proceeding to adjust the relations of the parties with due regard to the events that intervened. A consideration starting from a clean slate requires the accounting and restitution of what the parties received, or are due to receive, from one another.

I point out the above deficiencies as they involve factual questions that will be material in the clean slate approach I mentioned above. I point out, however, that whatever restitutions may have to be made in a ***clean slate approach***, the FWBs who worked for HLI should retain the ₱3 billion given to them as salaries and wages, and any other benefit they may have received as employees of HLI. They received these sums as wages and compensation earned for services rendered, and these are no longer subject to question.

V. Conclusion

For the foregoing reasons, I vote to **DENY** the petitioner Hacienda Luisita, Inc.'s petition, and **AFFIRM** public respondent PARC's Resolution No. 2005-32-01 revoking the SDP, as well as its Resolution No. 2006-34-01 denying the petitioner's motion for reconsideration.

The decision to subject the land to compulsory agrarian reform coverage should be **AFFIRMED**, with the **MODIFICATION**

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[100] *Ponencia*, p. 63.

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that while the acquired lands were included by the public respondent Department of Agrarian Reform in its Notice of Compulsory Coverage, the purchase by the petitioners-intervenors, as well as the portion of land acquired for the SCTEX complex, should be recognized as valid and effective. I make no conclusion with respect to the transfer of 200 hectares to Luisita Realty, Inc., but I recognize that the validity of the transfer can still be proven, if Luisita Realty, Inc. so desires, before the DAR. Otherwise, the 200 hectares should be subject to compulsory CARP coverage.

VI. ORDERS AND DIRECTIVES

I. TO THE DEPARTMENT OF AGRARIAN REFORM

The public respondent Department of Agrarian Reform is hereby **ORDERED** to implement the Notice of Compulsory Coverage as soon as possible and to monitor the land distribution to ensure the equitable distribution of the land to the qualified farmworkers-beneficiaries. In this regard, it is **ORDERED** to:

a) determine the amount of just compensation that the petitioner Hacienda Luisita, Inc. is entitled to for the 4,915.75 hectares of *Hacienda Luisita*, based on its value on May 11, 1989;

b) determine the amount of yearly rentals that petitioner Hacienda Luisita, Inc. must pay the qualified farmworkers-beneficiaries, for the use and possession of the land from 1989, until possession is officially turned over to the Department of Agrarian Reform for distribution (with due adjustment for the portions sold to Luisita Industrial Park Corporation, Rizal Commercial Banking Corporation and the government for the Subic-Clark-Tarlac Expressway);

c) identify the farmworkers-beneficiaries who are qualified to receive land under the compulsory CARP coverage of the agricultural land of Hacienda Luisita, Inc., and the benefits and awards under this Decision;

d) determine the benefits under the void Stock Distribution Option Agreement/Stock Distribution Plan that the

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qualified farmworkers-beneficiaries actually received from Hacienda Luisita, Inc.;

e) settle the distribution of the proceeds of the sale of the parcels of land sold to the Luisita Industrial Park Corporation and Rizal Commercial Banking Corporation, with the qualified farmworkers-beneficiaries participating to the extent of the value of these parcels of land as of May 11, 1989;

f) settle the distribution of the proceeds of the sale of the expropriated land to the government for the Subic-Clark-Tarlac Expressway, with the qualified farmworkers-beneficiaries entitled to all the proceeds that Hacienda Luisita, Inc. received for this transaction;

g) settle the claims and obligations arising from the Court's Decision, taking into account that the Land Bank of the Philippines is the party mandated by law to advance the payment of the land taken for agrarian reform purposes; and

h) provide the Luisita Realty, Inc. the opportunity to present evidence, with notice to all the parties to this case, to prove the validity of the transfer of 200 hectares of converted land by Hacienda Luisita, Inc.

In adjusting the parties' rights, claims and obligations to one another based on the rulings, guidelines and parameters of this Court's Decision, the Department of Agrarian Reform shall take advantage of the principle of set-off or compensation under the Civil Code of the Philippines, whenever applicable; shall employ mediation and conciliation techniques, whenever possible; shall apply Section 27 of the CARL, if possible; and shall cause the least disturbance to the *status quo*, particularly in the restitution of the home lots previously distributed under the nullified Stock Distribution Option Agreement/Stock Distribution Plan.

The Department of Agrarian Reform shall submit quarterly reports of its implementation efforts to this Court starting at the end of the second quarter after the finality of the Court's Decision, until the case is considered fully closed and terminated.

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II. TO THE QUALIFIED FWBs UNDER THE VOIDED SDOA

Those who qualified as farmworkers-beneficiaries under the nullified Stock Distribution Option Agreement/Stock Distribution Plan and who, accordingly, received shares of stocks and benefits under this Agreement/Plan are **ORDERED** to return, the following for purposes of accounting, compensation, or off-setting with amounts due from HLI, in accordance with the DAR's final implementation resolution:

a) the 59 million shares of stock of the petitioner Hacienda Luisita, Inc.; otherwise, these shares of stocks can simply be considered cancelled or reverted back to Hacienda Luisita, Inc.;

b) the ₱150 million, representing 3% of the gross sales of the production of the agricultural lands;

c) the ₱37.5 million, representing 3% of the proceeds from the sale of the 300 hectares of agricultural land; and

d) the 240 sq. m. home lots distributed for free to each of the 3,274 families of the farmworkers-beneficiaries.

III. TO HACIENDA LUISITA, INC.

The petitioner Hacienda Luisita, Inc. is **ORDERED** to:

a) surrender possession of the 4,535.75 hectares of land subject to compulsory coverage under RA 6657, to the Department of Agrarian Reform (*i.e.*, including the 200 hectares transferred to Luisita Realty that the Department of Agrarian Reform /Presidential Agrarian Reform Council did not recognize), subject to the opportunity granted under this Decision to Luisita Realty Corporation to prove its ownership.

b) pay the qualified farmworkers-beneficiaries, as determined by the Department of Agrarian Reform, the value of the 300 hectares of land transferred to Luisita Industrial Park Corporation and Rizal Commercial Banking Corporation, based on the May 11, 1989 value as determined by the Department of Agrarian Reform;

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this same directive applies with respect to the 200 hectares transferred to Luisita Realty, Inc., when and if the Department of Agrarian Reform finds the sale of the property valid; otherwise, the 200 hectares shall fall under the PARC's Notice of Coverage;

c) pay the qualified farmworkers-beneficiaries, as determined by the Department of Agrarian Reform, the just compensation it received from the government for the 80 hectares of expropriated land used for the Subic-Clark-Tarlac Expressway; and

d) pay the qualified farmworkers-beneficiaries yearly rental for the use of the land (except for the portions already transferred to Luisita Industrial Park Corporation, Rizal Commercial Banking Corporation and Subic-Clark-Tarlac Expressway) from 1989 until the land is turned over to the Department of Agrarian Reform, based on the value as determined by the Department of Agrarian Reform.

They are entitled to **RETAIN** the salaries, wages and other benefits they received as employees of the petitioner Hacienda Luisita, Inc.

Submitted for the *En Banc*'s consideration.

SEPARATE OPINION

MENDOZA, *J.*:

I fully concur with the well-explained position of Chief Justice Renato Corona that the Stock Distribution Plan *(SDP)* is unconstitutional as it is inconsistent with the basic concept of agrarian reform. Land reform entails land distribution to those who till the land. If there is no actual land distribution, there is no land reform.

Indeed, the distribution of shares of stock, not land, cannot be considered as compliance with the constitutional provision on agrarian reform. Section 31 of Republic Act *(R.A.)* No. 6657, which allows stock distribution, directly and explicitly contravenes

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Section 4, Article XIII of the Constitution. Doubtless, the SDP of petitioner Hacienda Luisita, Inc. *(HLI)*, which has as its basis Section 31 of R.A. No. 6657, is unconstitutional.

Under the SDP, instead of being given lands, the Farmworkers/ Beneficiaries *(FWBs)* were given shares of stocks in HLI, by which scheme, being in the minority, they have absolutely no control over the land. In fact, they can lose it. A case in point is the segregation and conversion of 300 hectares of HLI land from agricultural to non-agricultural purposes. When the 300 hectares were converted, transferred, mortgaged, and sold to pay an indebtedness, the FWBs had no say about it and effectively lost a big chunk of their land.

In a genuine land reform, the qualified FWBs should be given, directly or collectively, ownership of the land they till with all legal rights and entitlement, subject only to the limitations under the law, like the retention limits, expropriation and payment of just compensation. Under a collective ownership, if they are not in control of the cooperative or association, it cannot be considered a compliance with the law.

At any rate, as the majority is of the view that the constitutionality of the SDP cannot be assailed in this case as it is not the *lis mota*, I agree with the *ponencia* that FWBs are real parties-in-interest and that the Presidential Agrarian Reform Council *(PARC)* has the power and authority to revoke the SDP. I am also of the considered position that there has been serious violations of the Stock Distribution Option Agreement *(SDOA)*. The reasons, some contained in the Terminal Report, dated September 22, 2005, by the Special Task Force, are the following:

1] The "man days" method of computation, adopted in computing the number of shares to which each FWB is entitled, prejudiced the original qualified FWBs numbering about 6,296 and denied them of their rights under the law. When their numbers increased to 10,502 through the years under the "man days" method, the value of the shares of the original FWBs was effectively diluted.

Under the man-days system, the FWBs could be denied the opportunity to be granted shares of stock by just being not allowed to work altogether under the guise of rotation. There is also no

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guarantee that they would receive their due if they get retrenched or retired.

2] The 30-year time frame for stock transfer extended the period for HLI to complete the distribution of the 118,391,976.85 shares and, thus, violated the compliance periods provided under Section 31 of the CARL and Section 11 of AO No. 10-1988. Per Section 11, the approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission *(SEC)* within sixty (60) days from the said implementation of the stock distribution plan.

3] The agricultural land involved has not been maintained as "unfragmented." At least 500 hectares thereof have been carved out after its land use has been converted to non-agricultural uses.

4] There was no DAR verification and audit of the values of the agricultural lands and petitioner HLI's total assets. Thus, the value of the supposed shares of the FWBs in HLI is suspect.

5] HLI failed to comply with its obligation to grant 3% of the gross sales every year as production sharing benefit on top of the worker's salaries.

6] HLI failed to comply with its undertaking to distribute homelots to all the FWBs under the SDOA.

Moreover, as stated in the Terminal Report, the FWBs did not have any participation in the valuation of the agricultural land for the purpose of determining its proportionate equity in relation to the total assets of the corporation.

Pending the issuance of the corresponding shares of stocks, the FWBs remain ordinary farmers and/or farmworkers and the land remains under the full ownership and control of the original owner, the HLI/TADECO. Per Terminal Report, there was no compliance with the representations/warranties made under Section 5(a) and (b) of said Administrative Order No. 10. As claimed by HLI itself, the corporate activity has already stopped so that the contemplated profitability, increased income

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and greater benefits enumerated in the SDP have remained mere illusions.

Regarding the 300 hectares sold to Luisita Industrial Park Corporation *(LIPCO)* and RCBC, again I am with the *ponencia* that they were buyers in good faith and, thus, said portions should be excluded from the CARP's compulsory coverage. Records disclose that the conversion of these lands was with the acquiescence of the FWBs and approved by the PARC after full compliance with R.A. No. 6657 and the DAR's applicable regulations. The only dispute on this is the proceeds of the sale. After the conversion was approved, Centennary Holdings sold it to LIPCO for ₱750 million. On the other hand, RCBC received approximately 184 hectares of land from LIPCO, through a *dacion en pago*, in payment for LIPCO's debt amounting to ₱431.7 million. There is no indication that LIPCO and RCBC, both of whom exercised due diligence, were on notice that there was a defect in the titles of the lands they purchased. The FWBs, however, are entitled to receive the proceeds of the sales to LIPCO and RCBC based on their value at the time of the taking plus legal interest.

As to the remaining 200 hectares (of the original 500 hectares converted from agricultural to non-agricultural use with the DAR's approval), which appear to have been sold by HLI to Luisita Realty Corporation *(LRC)*, they should be subject to compulsory CARP coverage. Unlike LIPCO and RCBC, LRC never assailed PARC Resolution No. 2005-32-01, or the DAR's Notice of Coverage order. Its silence and inaction may be deemed an acquiescence with the PARC decision to place the land under the compulsory coverage of the CARP. Certainly, LRC's situation is different from the two, particularly RCBC, who is a mortgagee and, later, payee or purchaser in good faith. LRC, however, should be reimbursed for what it had paid plus legal interest.

With respect to the 80 hectares expropriated by the government for the SCTEX, there seems to be no dispute except on the disposition of the proceeds. The portion should be excluded from the coverage, pursuant to Section 6-A of Republic Act No. 6657, as amended by R.A. No. 9700. Like in the purchase

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by LIPCO and RCBC, the proceeds should go to the FWBs based on the value at the time of taking plus legal interest.

There being a violation of the SDOA, the petition should be *denied* and PARC's Resolution No. 2005-32-01 revoking the SDP, as well as its Resolution No. 2006-34-01, denying the petitioner's motion for reconsideration should be *affirmed*, with the *modification* that the purchase of the 300-hectare portion by LIPCO and RCBC, as well as the expropriation of the 80-hectare portion for the SCTEX complex, should be considered as valid. Thus, the said portions should be beyond the compulsory CARP coverage.

As a consequence of the violations, the subject lands should be distributed to the FWBs under the supervision of the DAR, who will determine just compensation, after proper audit and valuation of those already given and received and set off. Needless to state, the compensation should be with legal interest. I agree with the position of Justice Arturo Brion that the reckoning date for purposes of just compensation should be May 11, 1989, when the SDOA was executed. Said date is the time of the *taking* of the land for agrarian reform purposes.

In this regard, except on the matter of the 200 hectares sold to LRC, I adopt the reasoning of, and disposition recommended by, Justice Brion in his Separate Concurring and Dissenting Opinion.

Further, I fully agree with the *ponencia* that the FWBs are entitled to retain the salaries, wages and other benefits they received for services rendered by them as employees of HLI.

The bottom line is that the qualified FWBs should be given, directly or collectively, ownership of the land they till with all legal rights and entitlement, subject only to the prescribed retention limits, expropriation and the payment of just compensation.

The FWBs, however, who would opt to remain as stockholders of HLI, may waive their hard-won right to actually own the lands they till. After all, it is an attribute of ownership subject, of course, to the limitations under the law.

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Under Section 27 of R.A. No. 6657, FWBs may sell the lands they acquired under the CARP subject to the limitations stated therein. Thus:

> SEC. 27. *Transferability of Awarded Lands*. — Lands acquired by beneficiaries under this Act 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**: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the *barangay* where the land is situated. The Provincial Agrarian Coordinating Committee (PARCCOM), as herein provided, shall, in turn, be given due notice thereof by the BARC.
>
> If the land has not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.
>
> In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land.

Considering, however, that more than 10 years have elapsed from May 11, 1989, the date of the "taking" of the *Hacienda Luisita*, the qualified FWBs, who can validly dispose of their due shares, may do so, in favor of LBP or other qualified beneficiaries. The 10-year period need not be counted from the issuance of the Emancipation Title *(EP)* or Certificate of Land Ownership Award *(CLOA)* because, under the SDOA, shares, not land, were to be awarded and distributed.

The DAR shall select the method of determining the will of the parties and supervise it.

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DISSENTING OPINION

CORONA, *C.J.*:

> MR. OPLE. x x x **But when the Constitution directs Congress to the effect that the State shall encourage and undertake distribution of all agricultural lands**, subject to limitations put by law especially on retention limits, **does this contemplate** — this question I address to the Committee and particularly to Commissioner Tadeo — **a blanket approach to all agricultural lands so that we do not distinguish between, let us say, the owners of Hacienda Luisita, the biggest plantation in Luzon with 6,000 hectares**[,] and this chap in Laguna or Quezon who has only 10 hectares of coconut plantation? ***Sa inyo bang masid at wari ay masasagasaan ng land distribution ang dalawang ito****: ang may-ari ng pinakamalaking hasyenda dito sa Luzon at isang hindi naman mayaman, ni hindi mariwasa, pangkaraniwang tao lamang na nagmamay-ari ng isang sukat ng lupang tinatamnan ng niyog na hindi hihigit sa sampung ektarya?*
>
> MR. TADEO. ***Pareho***.
>
> x x x x x x x x x
>
> MR. OPLE. x x x With respect to just a few enormous landed estates, I have already given examples: **Hacienda Luisita, the biggest in Luzon, with 6,000 hectares of rice and corn land and sugar land and with 6,000 tenants and workers**; the Canlubang Sugar Estate, just across the city in Laguna; and in the West Visayas alone with about 30,000 sugar planters or hacenderos — the aggregate for the nation escapes me for the moment. **In the ultimate stage of the land reform program as now envisioned, will all of these estates be**

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> **redistributed to their tenants**, and if they have no tenants to whom will they be redistributed?
>
> MR. TADEO. **The principle is agrarian land for the tillers and land for the landless**. x x x[1]

Agrarian reform is an essential element of social justice under the 1987 Constitution. It "mandates that farmers and farmworkers have the right to own the lands they till, individually or collectively, through cooperatives or similar organizations."[2] It aims to liberate farmers and farmworkers from bondage to the soil, to ensure that they do not remain slaves of the land but stewards thereof.

The decision of the Court in this case today should promote the constitutional intent of social justice through genuine and meaningful agrarian reform. This is imperative because the framers of the 1987 Constitution themselves recognized the importance of Hacienda Luisita in the implementation of agrarian reform in the Philippines. Thus, this case is of transcendental importance as it is a test of the Court's fidelity to agrarian reform, social justice and the Constitution.

HISTORY OF AGRARIAN REFORM IN THE PHILIPPINES

Agrarian reform has been envisioned to be liberating for a major but marginalized sector of Philippine society, the landless farmers and farmworkers. History, too, has been said to be liberating. A quick review of the long and tortuous story "of the toiling masses to till the land as freemen and not as slaves chained in bondage to a feudalistic system of land ownership"[3] should enlighten us better on the significance of the Court's decision in this case.

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[1] Record of the Constitutional Commission, Vol. II, pp. 663-664. Emphasis supplied.

[2] *Id.*, p. 607.

[3] Land Reform – Pillar of the Nation's Recovery, Commissioner Gregorio D. Tingson, Record of the Constitutional Commission, Vol. III, p. 784.

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By Royal Decree of November 7, 1751 the King of Spain acknowledged that the revolts which broke out among peasants in the provinces of Cavite, Bulacan, Laguna and Morong (now, Rizal) stemmed from "injuries which the [Filipinos] received from the managers of the estates which are owned by the religious of St. Dominic and those of St. Augustine — usurping the lands of the [Filipinos], without leaving them the freedom of the rivers for their fishing, or allowing them to cut woods for their necessary use, or even collect the wild fruits x x x."[4] The King approved the pacification measures adopted by Don Pedro Calderon Enriquez of the Royal *Audiencia* who "demanded from the aforesaid religious the titles of ownership of the lands which they possessed; and notwithstanding the resistance that they made to him x x x distributed to the villages the lands which the [religious] orders had usurped, and all which they held without legitimate cause [he] declared to be crown lands."[5]

It has been two centuries and three scores since the first recorded attempt at compulsory land redistribution in the Philippines.

It proved to be ineffectual though for by the end of the Spanish period and the beginning of the American era the same religious orders still controlled vast tracts of land commonly known as "friar lands."[6] In his Special Reports to the U.S. President in 1908, Governor General William Howard Taft placed friar landholdings at 171,991 hectares tilled by about 70,000 landless tenants.[7] Noting that such situation was "[a] most potential source

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[4] As translated to English in Blair, E.H. & Robertson, J.A.. 1911. *The Philippine Islands*, 1493-1803, Vol. 1, No. 48: 27-36. Arthur and Clarke Company, Cleveland. Accessed through http://quod.lib.umich.edu/p/philamer/ on 13 March 2011.

[5] *Id.*

[6] Saulo-Adriano, Lourdes, *A General Assessment of the Comprehensive Agrarian Reform Program*, pp. 5-11 (1991), Philippine Institute for Development Studies. Accessed through http://dirp4.pids.gov.ph.

[7] WM. H. Taft (Secretary of War January 23, 1908) and J. M. Dickinson (Secretary of War November 23, 1910), Special Reports on the Philippines to the President, Washington, D.C., January 23, 1908, p. 21. Found in *The*

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of disorder in the islands," Taft negotiated with Rome for the purchase of the friar lands for $7 Million with sinking funds.[8] The "lands were to be disposed of to the tenants as rapidly as the public interest will permit"[9] even at a net pecuniary loss to the colonial government.[10]

However, in a sudden shift of policy, the U.S. sold friar lands on terms most advantageous to it[11] – large tracts[12] were sold for close to $7 Million to corporate and individual investors.[13] Most tenants in possession were said to have been disinterested to purchase the lands.[14] They were extended assistance though in the form of better sharing and credit arrangements to ameliorate agrarian relations.[15]

Soon after the Philippines was plunged into a series of peasant uprisings led by the *Sakdalista* in the 1930's and the *Hukbalahap* in the 1950's. Appeasement came in the form of RA 1199 (Agricultural Tenancy Act of 1954) and RA 1400 (Land Reform

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United States and its Territories of the University of Michigan Library Southeast Asia collection which contains the full text of monographs and government documents published in the United States, Spain, and the Philippines between 1870 and 1925 and accessed through http://quod.lib.umich.edu/p/philamer/ on March 13, 2011.

[8] *Id.* at p. 59.

[9] *Id.* at p. 85.

[10] *Id.*

[11] Taft explained that "[a]t the rate of interest the bonds draw, the cost of the lands would in 30 years, when the bonds mature, have represented more than treble the original cost. The Philippine government needs its resources for internal improvements, and it would have been poor financiering to pay interest on the bonds and finally the principal and continue to hold these lands until they would be taken up by inhabitants of the islands, which would mean in the remote future." *Id.*, p. 106.

[12] The Philippine Bill of 1902 set the ceilings on the hectarage of individual and corporate landholdings at 16 has. and 1,024 has., respectively.

[13] *Supra* note 7 at pp. 105-106.

[14] *Id.*

[15] See Public Act No. 4054 (1933).

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Act of 1955). RA 1199 allowed tenants to become leaseholders while RA 1400 mandated compulsory land redistribution. However, RA 1400 set unreasonable retention limits at 300 hectares for private rice lands and 600 hectares for corporate lands.[16]

As peasant unrest continued to fester, RA 3844 (Land Reform Code of 1963) was enacted instituting the "operation land transfer" program but allowing a maximum retention area of 75 hectares.[17] This was followed in 1971 by RAs 6389 and 6390 (Code of Agrarian Reforms) which created the Department of Agrarian Reform, reinforced the position of farmers[18] and expanded the scope of agrarian reform by reducing the retention limit to 24 hectares.[19] In 1972, President Ferdinand E. Marcos issued PD 2 proclaiming the entire Philippines as a land reform area. However, PD 27 subsequently restricted the scope of land reform to the compulsory redistribution of tenanted rice and corn lands exceeding seven hectares.

Thus, more than two and a half centuries after compulsory land redistribution was first attempted in the Philippines, there remained so much unfinished business. It is this which the social justice provisions of the 1987 Constitution were intended to finish. Section 4, Article XIII thereof commands:

> Section 4. **The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till** or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, **the State shall encourage and undertake the just distribution of all agricultural lands,** subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment

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[16] Sec. 6.

[17] Sec. 51.

[18] Among others, it provided for the automatic conversion of existing agricultural share tenancy to agricultural leasehold and strengthened the rights of pre-emption and redemption.

[19] Sec. 16, amending Sec. 51 of RA 3844.

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of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied)

By its plain language, it requires that the law implementing the agrarian reform program envisioned by the Constitution should employ a **land redistribution** mechanism. Subject only to retention limits as may be prescribed by Congress and to payment of just compensation, ownership of all agricultural lands are to be distributed and transferred to the farmers and farmworkers who till the land.

There is absolutely no doubt in my mind that the Constitution has ordained land redistribution as the mechanism of agrarian reform. First, it recognizes the **right** of farmers and regular farmworkers who are landless **to own directly or collectively the lands they till**. Second, it affirms the **primacy**[20] **of this**

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[20] The original formulation of the present Section 4, Article XIII was as follows:

SEC. 5. The State shall undertake a genuine agrarian reform program founded on the **primacy of the rights of farmers and farmworkers to own directly or collectively the lands they till**. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such retention limits as the National Assembly may prescribe and subject to a fair and progressive system of compensation. (Record of the Constitutional Commission, Vol. II, p. 605.)

The deliberations of the members of the Constitutional Commission also reveal the following:

MR. TADEO. *Ang tunay na reporma sa lupa ay pangunahing nakabatay sa kapakinabangan ng mg biyaya nito sa nagbubungkal ng lupa at lumilikha ng yaman nito at sa nagmamay-ari ng lupa.* (*Id.*, p. 677)

x x x x x x x x x

MR. BENNAGEN. *Maaari kayang magdagdag sa pagpapaliwanag ng "primacy"? Kasi may cultural background ito. Dahil* agrarian *society pa ang lipunang Pilipino, maigting talaga ang ugnayan ng mga magsasaka sa kanilang lupa. Halimbawa, sinasabi nila na ang lupa ay pinagbuhusan na ng dugo, pawis at luha*. So land acquires a symbolic content that is not simply negated by growth, by productivity, *etc*. The primacy should be seen in relation to an agrarian program that leads to a later stage of social development which at some point in time may already negate this kind of attachment. The assumption is that there are already certain options available to the farmers.

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right which is enshrined as the centerpiece of agrarian reform, thereby guaranteeing its enforcement. Third, in the same breath, it directs that, to such end, the State shall undertake the **just distribution of all agricultural lands**,[21] subject only to retention limits and just compensation.

Pursuant to the mandate of Section 4, Article XIII of the Constitution, Congress enacted RA 6657 (Comprehensive Agrarian Reform Law of 1988). It was supposed to be a revolutionary law, introducing innovative approaches to agrarian reform.

Marahil ***ang primacy ay ang pagkilala sa pangangailangan ng magsasaka — ang pag-aari ng lupa****. Ang assumption ay ang pag-aari mismo ng lupa* becomes the basis for the farmers to enjoy the benefits, the fruits of labor. x x x (*Id.*, p. 678)

MR. TADEO. x x x *Kung sinasabi nating si Kristo ay* liberating *dahil ang api ay lalaya at ang mga bihag ay mangaliligtas, sinabi rin ni Commissioner Felicitas Aquino na kung ang history ay liberating, dapat ding maging liberating ang Saligang Batas. Ang magpapalaya sa atin ay ang* agrarian and natural resources reform.

The primary, foremost and paramount principles and objectives are contained [i]n lines 19 to 22: "primacy of the rights and of farmers and farmworkers to own directly or collectively the lands they till." *Ito ang kauna-unahan at pinakamahalagang prinsipyo at layunin ng isang tunay na reporma sa lupa – na ang nagbubungkal ng lupa ay maging may-ari nito*. x x x (695-696)

MR. DAVIDE. x x x we did not delete the concept of the primacy of the rights of farmers and farm workers. In other words, this only confirms the existence of the right, as worded; it is confirmatory of that right. There is no need to emphasize that right because that right is conceded, and it now becomes the duty of the State to undertake these genuine and authentic land and agrarian reforms.

x x x x x x x x x

MR. TADEO. *Maliwanag na nandito iyong* primacy of the rights.

MR. DAVIDE. Certainly, it is inherent, it is conceded, and that is why we give it a mandate. We make it a duty on the part of the State to respect that particular right. (696-697)

[21] Former Chief Justice Hilario G. Davide, Jr., then a Commissioner in the Constitutional Commission, stated that considering the right of farmers and farmworkers to the lands that they till, "it now becomes the duty of the State to undertake these genuine and authentic land and agrarian reforms." Records, Vol. II, p. 697.

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Among its novel provisions (and relevant to this case) is Section 31 which provides:

SEC. 31. *Corporate Landowners.* — Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries, under such terms and conditions consistent with this Act, as they may agree upon, subject to confirmation by the DAR.

Upon certification by the DAR, **corporations owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them**. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to associations, with respect to their equity or participation.

Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: Provided, That the following conditions are complied with:

a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits, the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;

c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and

d) Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

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If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.

Section 31 of RA 6657 grants corporate landowners like petitioner Hacienda Luisita, Inc. (HLI) the option to give qualified agrarian reform beneficiaries the right to purchase capital stock of the corporation proportionate to how much the agricultural land actually devoted to agricultural activities bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. Such voluntary divestment of a portion of the corporate landowner's capital stock to qualified agrarian reform beneficiaries is considered compliance with the agrarian reform law (RA 6657), subject to certain conditions.

THE FUNDAMENTAL ISSUE

Section 31 of RA 6657 is at the center of this controversy as it is the basis of the assailed stock distribution plan executed by petitioner HLI with farmworker-beneficiaries.

ON THE CONSTITUTIONALITY OF SECTION 31 OF RA 6657

The Constitution has vested this Court with the power and duty to determine and declare whether the scales of constitutionality have been kept in balance or unduly tipped, whether an official action is constitutional or not. As the fundamental and supreme law of the land, the Constitution also serves as the counterweight against which the validity of all actions of the government is weighed. With it, the Court ascertains whether the action of a department, agency or public officer preserves the constitutional equilibrium or disturbs it.

In this case, respondents argue that Section 31 of RA 6657 has been weighed and found wanting.[22] In particular, its

[22] The expression comes from the Daniel 5:25: "*Mene, mene, thekel, upharsin*." It is loosely translated as "You have been weighed and found wanting; hence, you have been divided and handed to others."

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constitutionality is assailed insofar as it provides petitioner HLI the choice to resort to stock distribution in order to comply with the agrarian reform program. Respondents assert that the stock distribution arrangement is fundamentally infirm as it impairs the right of farmers and farmworkers under Section 4, Article XIII of the Constitution to own the land they till.[23]

For its part, petitioner HLI points out that the constitutional issue has been raised collaterally and is therefore proscribed.

The *ponencia* opines that the challenge on the constitutionality of Section 31 of RA 6657 and its counterpart provision in EO 229 must fail because such issue is not the *lis mota* of the case.[24] Moreover, it has become moot and academic.[25]

I strongly disagree.

While the sword of judicial review must be unsheathed with restraint, the Court must not hesitate to wield it to strike down laws that unduly impair basic rights and constitutional values.

Moreover, jurisprudence dictates:

> It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid **unless such question is raised by the parties** and that when it is raised, if the record also presents some other ground upon which the court may raise its judgment, that course will be adopted and the constitutional question will be left for consideration until **such question will be unavoidable**.[26]

In this case, the question of constitutionality has been raised by the parties-in-interest to the case.[27] In addition, any discussion of petitioner HLI's stock distribution plan necessarily and

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[23] TSN, Aug. 24, 2010, p. 205.

[24] Draft *ponencia*, p. 42.

[25] *Id.* at 43.

[26] *Sotto v. Commission on Elections*, 76 Phil. 516, 522 (1946). (Emphasis supplied)

[27] Noel Mallari and Farmworkers Agrarian Reform Movement, Inc.

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inescapably involves a discussion of its legal basis, Section 31 of RA 6657. More importantly, public interest and a grave constitutional violation render the issue of the constitutionality of Section 31 of RA 6657 unavoidable. Agrarian reform is historically imbued with public interest and, as the records of the Constitutional Commission show, **Hacienda Luisita has always been viewed as a litmus test of genuine agrarian reform**. Furthermore, the framers emphasized the primacy of the right of farmers and farmworkers to directly or collectively own the lands they till. The dilution of this right not only weakens the right but also debases the constitutional intent thereby presenting a serious assault on the Constitution.

It is also noteworthy that while the *ponencia* **evades** the issue of constitutionality, it adverts to the doctrine of operative facts in its attempt to come up with what it deems to be a just and equitable resolution of this case. This is significant. The *ponencia* itself declares that the doctrine of operative facts is applied in order to avoid undue harshness and resulting unfairness when a law or executive action is **declared null and void**,[28] therefore unconstitutional. As the Court explained the doctrine:

> **Under the operative fact doctrine, the law is recognized as unconstitutional** but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. In fact, **the invocation of the operative fact doctrine is an admission that the law is unconstitutional**.[29]

Assuming for the sake of argument that the constitutionality of Section 31 of RA 6657 has been superseded and rendered moot by Section 5 of RA 9700 *vis-a-vis* stock distribution as a form of compliance with agrarian reform, the issue does not thereby become totally untouchable. Courts will still decide cases, otherwise moot and academic, if:

> x x x first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public

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[28] Draft *ponencia*, p. 70.

[29] *League of Cities of the Philippines v. Commission on Elections*, G.R. No. 176951, 24 August 2010. (Emphasis supplied)

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interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review . . .[30]

In this case, all the above-mentioned requisites are present:

First, a grave violation of the Constitution exists. Section 31 of RA 6657 runs roughshod over the language and spirit of Section 4, Article XIII of the Constitution.

The first sentence of Section 4 is plain and unmistakeable. It grounds the mandate for agrarian reform on the right of farmers and regular farmworkers, who are landless, **to own** directly or collectively the **land** they till. The express language of the provision is clear and unequivocal — agrarian reform means that farmers and regular farmworkers who are landless should be given direct or collective ownership of the land they till. That is their right.

Unless there is land distribution, there can be no agrarian reform. Any program that gives farmers or farmworkers anything less than ownership of land fails to conform to the mandate of the Constitution. **In other words, a program that gives qualified beneficiaries stock certificates instead of land is not agrarian reform**.

Actual land distribution is the essential characteristic of a constitutional agrarian reform program. The polar star, when we speak of land reform, is that **the farmer has a right to the land he tills**.[31] Indeed, a reading of the framers' intent clearly

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[30] *Quizon v. Commission on Elections*, G.R. No. 177927, 15 February 2008, 545 SCRA 635; *Mattel, Inc. v. Francisco*, G.R. No. 166886, 30 July 2008, 560 SCRA 506.

[31] Commissioner Felicitas S. Aquino of the Constitutional Commission made this remark during the deliberations on the provision on agrarian reform. According to her, while a farmer's right to the land he tills is not an immutable right as the claim of ownership does not automatically pertain or correspond to the same land that the farmer or farm worker is actually and physically tilling, it simply yields to the limitations and adjustments provided for in the second sentence of the first paragraph, specifically the retention limits. (Records of the Constitutional Commission, Vol. III, p. 10)

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shows that the philosophy behind agrarian reform is the distribution of land to farmers, nothing less.

MR. NOLLEDO. And when we talk of the phrase "to own directly," we mean the principle of **direct ownership by the tiller**?

MR. MONSOD. Yes.

MR. NOLLEDO. And when we talk of "collectively," we mean communal ownership, stewardship or State ownership?

MS. NIEVA. In this section, we conceive of cooperatives; that is farmers' cooperatives **owning the land**, not the State.

MR. NOLLEDO. And when we talk of "collectively," referring to farmers' cooperatives, do the farmers own specific areas of land where they only unite in their efforts?

MS. NIEVA. That is one way.

MR. NOLLEDO. Because I understand that there are two basic systems involved: the "moshave" type of agriculture and the "kibbutz." So are both contemplated in the report?

MR. TADEO. *Ang dalawa kasing pamamaraan ng pagpapatupad ng tunay na reporma sa lupa ay ang pagmamay-ari ng lupa na hahatiin sa individual na pagmamay-ari* – directly – *at ang tinatawag na sama-samang gagawin ng mga magbubukid. Tulad sa Negros, ang gusto ng mga magbubukid ay gawin nila itong "cooperative or collective farm." Ang ibig sabihin ay sama-sama nilang sasakahin.*

MR. BENNAGEN. *Madam President, nais ko lang dagdagan iyong sagot ni Ginoong Tadeo.* x x x

Kasi, doon sa "collective ownership," *kasali din iyong* "communal ownership" *ng mga minorya. Halimbawa sa Tanay, noong gumawa kami ng isang pananaliksik doon, nagtaka sila kung bakit kailangan pang magkaroon ng* "land reform" *na kung saan ay bibigyan sila ng tig-iisang titulo. At sila nga ay nagpunta sa* Ministry of Agrarian Reform *at sinabi nila na hindi ito ang gusto nila; kasi sila naman ay magkakamag-anak.* ***Ang gusto nila ay lupa*** *at hindi na kailangan ang tig-iisang titulo. Maraming ganitong kaso mula sa Cordillera hanggang Zambales, Mindoro at Mindanao, kayat kasali ito sa konsepto ng* "collective ownership."

x x x x x x x x x

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MR. VILLACORTA. x x x Section 5[32] gives the **opportunity for tillers of the soil to own the land that they till**; x x x

x x x x x x x x x

MR. TADEO. x x x ***Ang dahilan ng kahirapan natin sa Pilipinas ngayon ay ang pagtitipon-tipon ng vast tracts of land sa kamay ng iilan***. *Lupa ang nagbibigay ng buhay sa magbubukid at sa iba pang manggagawa sa bukid. Kapag inalis sa kanila ang lupa, parang inalisan na rin sila ng buhay. Kaya* ***kinakailangan talagang magkaroon ng tinatawag na*** **just distribution**. x x x

x x x x x x x x x

MR. TADEO. *Kasi ganito iyan.* ***Dapat muna nating makita ang prinsipyo ng agrarian reform, iyong maging may-ari siya ng lupa na kaniyang binubungkal. Iyon ang kauna-unahang prinsipyo nito***. x x x

x x x x x x x x x

MR. TINGSON. x x x When we speak here of "to own directly or collectively the lands they till," is this land for the tillers rather than land for the landless? Before, we used to hear "land for the landless," but now the slogan is "land for the tillers." Is that right?

MR. TADEO. *Ang prinsipyong umiiral dito ay iyong* **land for the tillers**. *Ang ibig sabihin ng* "directly" *ay tulad sa implementasyon sa* rice and corn lands *kung saan* ***inaari na ng mga magsasaka ang lupang binubungkal nila***. *Ang ibig sabihin naman ng* "collectively" *ay* ***sama-samang paggawa sa isang lupain o isang bukid****, katulad ng sitwasyon sa Negros.*

x x x x x x x x x

MR. BENNAGEN. *Maaari kayang magdagdag sa pagpapaliwanag ng* "primacy"? *Kasi may* cultural background *ito. Dahil* agrarian society *pa ang lipunang Pilipino, maigting talaga ang ugnayan ng mga magsasaka sa kanilang lupa. Halimbawa, sinasabi nila na ang lupa ay pinagbuhusan na ng dugo, pawis at luha.* So land acquires a symbolic content that is not simply negated by growth, by productivity, *etc*. The primacy should be seen in relation to an agrarian program that leads to a later stage of social development

[32] As stated earlier, the present Section 4 was numbered Section 5 in the first draft.

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which at some point in time may already negate this kind of attachment. The assumption is that there are already certain options available to the farmers. *Marahil* ***ang primacy ay ang pagkilala sa pangangailangan ng magsasaka — ang pag-aari ng lupa***. *Ang* assumption *ay* ***ang pag-aari mismo ng lupa*** **becomes the basis for the farmers to enjoy the benefits, the fruits of labor**. x x x (678)

x x x x x x x x x

MR. TADEO. x x x *Kung sinasabi nating si Kristo ay liberating dahil ang api ay lalaya at ang mga bihag ay mangaliligtas, sinabi rin ni Commissioner Felicitas Aquino na kung ang history ay liberating, dapat ding maging liberating ang Saligang Batas. Ang magpapalaya sa atin ay ang* agrarian and natural resources reform.

The primary, foremost and paramount principles and objectives are contained [i]n lines 19 to 22: "primacy of the rights and of farmers and farmworkers to own directly or collectively the lands they till." ***Ito ang kauna-unahan at pinakamahalagang prinsipyo at layunin ng isang tunay na reporma sa lupa — na ang nagbubungkal ng lupa ay maging may-ari nito***. x x x (695-696)

The essential thrust of agrarian reform is land-to-the-tiller. Thus, to satisfy the mandate of the constitution, any implementation of agrarian reform should always preserve the control over the land in the hands of its tiller or tillers, whether individually or collectively.

Consequently, any law that goes against this constitutional mandate of the actual grant of land to farmers and regular farmworkers must be nullified. If the Constitution, as it is now worded and as it was intended by the framers envisaged an alternative to actual land distribution (*e.g.*, stock distribution) such option could have been easily and explicitly provided for in its text or even conceptualized in the intent of the framers. Absolutely no such alternative was provided for. Section 4, Article XIII on agrarian reform, in no uncertain terms, speaks of **land** to be owned directly or collectively by farmers and regular farm workers.

By allowing the distribution of capital stock, not land, as "compliance" with agrarian reform, Section 31 of RA 6657 directly and explicitly contravenes Section 4, Article XIII of

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the Constitution. The corporate landowner remains to be the owner of the agricultural land. Qualified beneficiaries are given ownership only of shares of stock, not the lands they till. Landless farmers and farmworkers become **landless stockholders** but still tilling the land of the corporate owner, thereby perpetuating their status as landless farmers and farmworkers.

Second, this case is of exceptional character and involves paramount public interest. In *La Bugal-B'Laan Tribal Association, Inc.*,[33] the Court reminded itself of the need to recognize the extraordinary character of the situation and the overriding public interest involved in a case. Here, there is a necessity for a categorical ruling to end the uncertainties plaguing agrarian reform caused by serious constitutional doubts on Section 31 of RA 6657. While the *ponencia* would have the doubts linger, strong reasons of fundamental public policy demand that the issue of constitutionality be resolved now,[34] before the stormy cloud of doubt can cause a social cataclysm.

At the risk of being repetitive, agrarian reform is fundamentally imbued with public interest and the implementation of agrarian reform at Hacienda Luisita has always been of paramount interest. Indeed, **it was specifically and unequivocally targeted when agrarian reform was being discussed in the Constitutional Commission**. Moreover, the Court should take judicial cognizance of the violent incidents that intermittently occur at Hacienda Luisita, solely because of the agrarian problem there. Indeed, Hacienda Luisita proves that, for landless farmers and farmworkers, the land they till is their life.

The Constitution does not only bestow the landless farmers and farmworkers the right to own the land they till but also concedes that right to them and makes it a duty of the State to respect that right through genuine and authentic agrarian reform. To subvert this right through a mechanism that allows stock

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[33] *La Bugal-B'laan Tribal Association, Inc., et al. v. Victor O. Ramos, Secretary, Dept. Of Environment & Natural Resources, et al.*, G.R. No. 127882, December 1, 2004.

[34] *Gonzales v. COMELEC*, G.R. No. L-27833, 18 April 1969, 27 SCRA 836.

distribution in lieu of land distribution as mandated by the Constitution strikes at the very heart of social justice. As a grave injustice, it must be struck down through the invalidation of the statutory provision that permits it.

To leave this issue unresolved is to allow the further creation of laws, rules or orders that permit policies creating, unintentionally or otherwise, means to avoid compliance with the foremost objective of agrarian reform — to give the humble farmer and farmworker the right to own the land he tills. To leave this matter unsettled is to encourage future subversion or frustration of agrarian reform, social justice and the Constitution.

Third, the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public.[35] Fundamental principles of agrarian reform must be established in order that its aim may be truly attained.

One such principle that must be etched in stone is that no law, rule or policy can subvert the ultimate goal of agrarian reform, the actual distribution of land to farmers and farmworkers who are landless. Agrarian reform requires that such landless farmers and farmworkers be given direct or collective ownership of the land they till, subject only to the retention limits and the payment of just compensation. There is no valid substitute to actual distribution of land because the right of landless farmers and farmworkers expressly and specifically refers to a **right to own the land they till**.

Fourth, this case is capable of repetition, yet evading review. As previously mentioned, if the subject provision is not struck down today as unconstitutional, the possibility of passing future laws providing for a similar option is ominously present. Indeed, what will stop our legislators from providing artificial alternatives to actual land distribution if this Court, in the face of an

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[35] This is in consonance with the Court's symbolic function of educating the members of the judiciary and of the legal profession as to the controlling principles and concepts on matters of great public importance. (See *David v. Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, 03 May 2006, 489 SCRA 160.)

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opportunity to do so, does not declare that such alternatives are completely against the Constitution?

We would be woefully remiss in our duty of safeguarding the Constitution and the constitutionally guaranteed right of a historically marginalized sector if we allowed a substantial deviation from its language and intent.

The following findings of the Special Task Force as stated in its Terminal Report[36] are worth reiterating:

> ... sugar-coated assurances were more than enough to make them fall for the SDO as they made them feel rich as "stock holder" of a rich and famous corporation despite the dirt in their hands and the tatters they use; given the feeling of security of tenure in their work when there is none; expectation to receive dividends when the corporation has already suspended operations allegedly due to losses; and a stable sugar production by maintaining the agricultural lands when a substantial portion thereof, of almost 1/8 of the total areas, has already been converted to non-agricultural uses.

Truly, the pitiful consequences of a convoluted agrarian reform policy, such as those reported above, can be avoided if laws were made to truly fulfill the aim of the constitutional provisions on agrarian reform. As the Constitution sought to make the farmers and farmworkers masters of their own land, the Court should not hesitate to state, without mincing word, that qualified agrarian reform beneficiaries deserve no less than ownership of land.

The river cannot rise higher than its source. An unconstitutional provision cannot be the basis of a constitutional act. As the stock distribution plan of petitioner HLI is based on Section 31 of RA 6657 which is unconstitutional, the stock distribution plan must perforce also be unconstitutional.

ON PETITIONER'S LONG DUE OBLIGATION TO DISTRIBUTE HACIENDA LUISITA TO FARMERS

Another compelling reason exists for ordering petitioner HLI to distribute the lands of Hacienda Luisita to farmworker

[36] *Rollo*, pp. 386-405.

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beneficiaries — the National Government, in 1957, aided petitioner HLI's predecessor-in-interest in acquiring Hacienda Luisita with the condition that the acquisition of Hacienda Luisita should be made "with a view to distributing this *hacienda* to small farmers in line with the [government][37]'s social justice program."[38] The distribution of land to the farmers should have been made within ten years. That was a *sine qua non* condition. It could have not been done away with for mere expediency. Petitioner HLI is bound by that condition.[39]

Indeed, the National Government sought to enforce the condition when it filed a case on May 7, 1980 against Tarlac Development Corporation (TADECO), petitioner HLI's predecessor-in-interest, in the Regional Trial Court of Manila, Branch 43.[40] The case, docketed as Civil Case No. 131654 entitled "*Republic of the Philippines vs. TADECO*," sought the surrender by TADECO of Hacienda Luisita to the Ministry of Agrarian Reform for distribution to qualified farmworker-beneficiaries.[41] In a decision dated December 2, 1985, the trial court upheld the position of the National Government and ordered TADECO to transfer control of Hacienda Luisita to the Ministry of Agrarian Reform, which will distribute the land to small farmers after paying TADECO ₱3.988 Million.[42]

The trial court's decision was appealed to the Court of Appeals where it was docketed as CA-G.R. CV No. 08364. The appellate

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[37] The term used was "Administration."

[38] Central Bank Monetary Board Resolution No. 1240 dated August 27, 1957 as quoted in Alyansa ng mga Manggagawag Bukid ng Hacienda Luisita's Petisyon (Para sa Pagpapawalang-Bisa sa Stock Distribution Option), Annex "K" of the petition. *Rollo*, pp. 175-183, 175.

[39] Contracts are obligatory and, as a rule, are binding to both parties, their heirs and assigns. See Articles 1308 and 1311, New Civil Code.

[40] Comment/Opposition of respondents Supervisory Group of Hacienda Luisita, Inc., p. 7. *Rollo*, pp. 530-641, p. 536.

[41] *Id*.

[42] *Id*.

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court, in a resolution dated May 18, 1988, dismissed the appeal without prejudice:

> WHEREFORE, the present case on appeal is hereby **dismissed without prejudice**, and should be **revived if any of the conditions as above set forth is not duly complied with by TADECO**.
>
> The conditions referred to are the following:
>
> (a) should TADECO fail to obtain approval of the stock distribution plan for failure to comply with all the requirements for corporate landowners set forth in the guidelines issued by the PARC or
>
> (b) if such stock distribution plan is approved by PARC, but TADECO fails to initially implement it.[43]

In this case, the stock distribution plan of petitioner HLI, TADECO's successor-in-interest, could not have been validly approved by the PARC as it was null and void for being contrary to law. Its essential terms, particularly the "man days" method for computing the number of shares to which a farmworker-beneficiary is entitled and the extended period for the complete distribution of shares to qualified farmworker-beneficiaries are against the letter and spirit of Section 31 of RA 6657, assuming that provision is valid, and DAO No. 10-1988.

Even assuming that the approval could have been validly made by the PARC, the subsequent revocation of such approval meant that there was no more approval to speak of, that the approval has already been withdrawn. Thus, in any case, the decision of the trial court should be revived, albeit on appeal. Such revival means that petitioner HLI cannot now evade its obligation which has long been overdue, Hacienda Luisita should be distributed to qualified farmworker-beneficiaries.

ON THE EQUITIES OF THE CASE AND ITS QUALIFICATIONS

Agrarian reform's underlying principle is the recognition of the rights of farmers and farmworkers who are landless to own,

[43] Court of Appeals resolution dated May 18, 1988 in CA-G.R. CV No. 08364.

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directly or collectively, the lands they till. Actual land distribution to qualified agrarian reform beneficiaries is mandatory. Anything that promises something other than land must be struck down for being unconstitutional.

Be that as it may and regardless of the constitutionality of Section 31 of RA 6657, the lifting of the temporary restraining order in this case coupled with the affirmation of PARC Resolution No. 2005-32-01 dated December 22, 2005 removes all barriers to the compulsory acquisition of Hacienda Luisita for actual land distribution to qualified farmworker-beneficiaries. The said PARC resolution directed that Hacienda Luisita "be forthwith placed under compulsory coverage or mandated land acquisition scheme"[44] and, pursuant thereto, a notice of coverage[45] was issued. Hence, the overall effect of the lifting of the temporary restraining order in this case should be the implementation of the "compulsory coverage or mandatory acquisition scheme" on the lands of Hacienda Luisita.

This notwithstanding and despite the nullity of Section 31 of RA 6657 and its illegitimate offspring, petitioner HLI's stock distribution plan, I am willing to concede that the equities of the case might possibly call for the application of the doctrine of operative facts. The Court cannot with a single stroke of the pen undo everything that has transpired in Hacienda Luisita *vis-à-vis* the relations between petitioner HLI and the farmworker-beneficiaries resulting from the execution of the stock distribution plan more than two decades ago. A simplistic declaration that no legal effect whatsoever may be given to any action taken pursuant to the stock distribution plan by virtue of its nullification will only result in unreasonable and unfair consequences in view of previous benefits enjoyed and obligations incurred by the parties under the said stock distribution plan.

Let me emphasize, however, that this tenuous concession is not without significant qualifications.

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[44] *Rollo*, p. 101.

[45] *Id.* at 103-106.

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First, while operative facts and considerations of fairness and equity might be considered in disposing of this case, the question of constitutionality of Section 31 of RA 6657 and, corollarily, of petitioner HLI's stock distribution plan, should be addressed squarely. As the said provision goes against both the letter and spirit of the Constitution, the Court must categorically say in no uncertain terms that it is null and void. The same principle applies to petitioner HLI's stock distribution plan.

Second, pursuant to both the express mandate and the intent of the Constitution, the qualified farmer-beneficiaries should be given ownership of the land they till. That is their right and entitlement, which is subject only to the prescribed retention limits and the payment of just compensation, as already explained.

Due to considerations of fairness and equity, however, those who wish to waive their right to actually own land and instead decide to hold on to their shares of stock may opt to stay as stockholders of petitioner HLI. Nonetheless, **this scheme should apply in this case only**.

Third, the proper action on the instant petition should be to **dismiss** it. For how can we grant it when it invites us to rule against the constitutional right of landless farmworker-beneficiaries to actually own the land they till? How can we sustain petitioner HLI's claim that its stock distribution plan should be upheld when we are in fact declaring that it is violative of the law and of the Constitution? Indeed, to affirm the correctness of PARC Resolution No. 2005-32-01 dated December 22, 2005 revoking the stock distribution plan and directing the compulsory distribution of Hacienda Luisita lands to the farmworker-beneficiaries and, at the same time, grant petitioner HLI's prayer for the nullification of the said PARC Resolution is an exercise in self-contradiction.

To say that we are partially granting the petition is to say that there is rightness in petitioner HLI's position that it can validly frustrate the actual distribution of Hacienda Luisita to the farmworker-beneficiaries. That is fundamentally and morally wrong.

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A FINAL WORD

Our action here today is not simply about Hacienda Luisita or a particular stock distribution plan. Our recognition of the right under the Constitution of those who till the land to steward it is the Court's marching order to dismantle the feudal tenurial relations that for centuries have shackled them to the soil in exchange for a pitiful share in the fruits, and install them as the direct or collective masters of the domain of their labor. It is not legal, nor moral, to replace their shackles with mere stock certificates or any other superficial alternative.

We take action in these cases today to promote social justice, champion the cause of the poor and distribute wealth more equitably. By applying the agrarian reform provision of the Constitution, we seek to empower the farmers, enhance their dignity and improve their lives by freeing them from their bondage to the land they till and making them owner-stewards thereof. We express iron-clad fealty to Section 4, Article XIII of the Constitution to dismantle the concentration of land in the hands of the privileged few. Thus, we direct the implementation of a genuine agrarian reform as envisioned by the Constitution by ordering the just distribution of land for the democratization of productive resources.

History will be the unforgiving judge of this Court. We cannot correct a historical anomaly and prevent the eruption of a social volcano by fancy legal arguments and impressively crafted devices for corporate control.

WHEREFORE, I vote that the petition be **DISMISSED**. Section 31 of RA 6657 should be declared **NULL and VOID** for being **unconstitutional**. Consequently, the stock distribution plan of petitioner HLI should likewise be declared **NULL and VOID** for being **unconstitutional**.

Accordingly, PARC Resolution Nos. 2005-32-01 dated December 22, 2005 and 2006-34-01 dated May 3, 2006 should be **AFFIRMED** in so far as they direct the implementation of compulsory coverage or mandated land acquisition scheme in Hacienda Luisita with the **MODIFICATION** that, *pro hac vice*

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due to considerations of fairness and equity, qualified farmworker-beneficiaries may waive their right to actually own the lands they till and stay as stockholders of petitioner HLI.

DISSENTING OPINION

SERENO, *J.*:

What the majority has created by its Decision are several legal and operational aberrations that will only set back the long-term resolution of the agrarian conflicts involving Hacienda Luisita and create even more havoc in our legal system. Instead of definitively putting the multi-angled issues to rest, the majority has only succeeded in throwing back the agrarian problem to the farmers, the original landowners and the Department of Agrarian Reform (DAR).

First, the majority Decision ruled in categorical language to (a) deny the Petition of Hacienda Luisita, Inc. (HLI), (b) affirm PARC Resolution No. 2005-32-01 dated 22 December 2005 and Resolution No. 2006-34-01 dated 03 May 2006, which revoked the approval of the HLI Stock Distribution Plan (SDP); and (c) pronounce that PARC Resolution No. 89-9-12 approving the HLI's Stock Distribution Plan (SDP), "is nullified and voided." However, without any legal basis left to support the SDP after the pronouncement of the complete nullity of the administrative approval thereof, the majority proceeded to allow the farmworker-beneficiaries (FWBs) of Hacienda Luisita the option to choose a completely legally baseless arrangement. It is legally baseless because an SDP and its operating agreement, a Stock Distribution Option Agreement (SDOA), can only be valid with the corresponding PARC approval. There is not a single legal twig on which the order to proceed with the voting option can hang, except the will of this Court's majority.

Second, they ruled that the SDOA dated 11 May 1989 between petitioner HLI, Tarlac Development Corporation (TADECO) and the farmworker-beneficiaries (FWBs) is illegal for two violations: (a) the distribution of shares of stock based on the number of man-days worked, and (b) the prolonged thirty-year

time frame for the distribution of shares; additionally, they ruled that these two arrangements have worked an injustice on the FWBs, contrary to the spirit and letter of agrarian reform. Yet, the majority will allow them to remain in such a prejudicial arrangement if they so decide. To allow the FWBs, the disadvantaged sector sought to be uplifted through agrarian reform, to remain in an illegal arrangement simply because they choose to so remain is completely contrary to the mandatory character of social justice legislation.

Third, while the majority states that a stock distribution option agreement can only be valid if the majority of the shares or the control of the corporation is in the hands of the farmers, they still ruled that the doctrine of operative facts led them to unqualifiedly validate the present corporate arrangement wherein the FWBs control only 33% of the shares of petitioner HLI, without ordering in the dispositive portion of the Decision a condition precedent to the holding of the referendum — the restructuring of HLI whereby majority control is firmly lodged in the FWBs.

Fourth, the majority employ the doctrine of operative facts to justify the voting option, even if jurisprudence allows this doctrine to be applied only in the extreme case in which equity demands it. The doctrine of operative facts applies only to prevent a resulting injustice, if the courts were to deny legal effect to acts done in good faith, pursuant to an illegal legislation or perhaps even executive action, but prior to the judicial declaration of the nullity of the government action. Here, there is no room for the application of the equity jurisdiction of the Court, when the CARL, in Section 31, categorically provides for direct land distribution in the event a stock distribution is not completed.

Fifth, assuming equity were to be applied, then it should be applied in favor of the FWBs by ordering direct land distribution, because that is the inequity that continues to fester — that the FWBs who have been promised ownership of the lands they till are denied the same, twenty-three years after the passage of CARL.

Sixth, the majority ruled that the issue of constitutionality of the stock distribution option under Section 31 of the Comprehensive

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Agrarian Reform Law, Republic Act No. 6657, is not the *lis mota* of the case; hence, the issue of constitutionality should be avoided if there is another basis for the court to rule on the case. Yet, the majority proceeded to discuss and even rule in favor of its constitutionality.

Should there be no reversal of the above aberrant ruling allowing the FWBs to vote to remain in HLI, the only way for the ruling to not work too grave an injustice is if petitioner HLI is required to be restructured in such a way: (1) that the correct valuation of the lands *vis-à-vis* non-land assets be made, and (2) that no less than 51% of the controlling shares, as well as the beneficial ownership of petitioner HLI, be in the hands of qualified FWBs. Unless this is done, DAR should not even proceed to conduct a referendum giving the FWBs the choice to stay in a corporation of which they have no control.

I posit, as Justice Arturo D. Brion does, that FWBs be immediately empowered to dispose of the lands as they so deem fit. I disagree with the majority that those who will opt to leave the SDOA can only dispose of their lands no less than ten (10) years after the registration of the certificate of land ownership award (CLOA) or the emancipation patent (EP) and not until they have fully paid the purchase price to the Land Bank of the Philippines (LBP). These farmers have waited for decades for the recognition of their rights under the Comprehensive Agrarian Reform Law (CARL). Whether we use Justice Brion's starting point of 11 May 1989, or my starting point of 11 May 1991, twenty years have lapsed and the land has been locked under agricultural use all that time, with no opportunity to exploit its value for other purposes. We should allow the farmers the chance to ride on the crest of economic progress by giving them the chance to engage in the market, not only as entrepreneurs, as corporate or cooperative farmers, but also as lessors or even as real estate sellers. The Court should allow the DAR to devise a mechanism that would enable direct land transfer to buyers or co-development partners, so that the lands and the farmers can truly be free. This is where the Court's equity jurisdiction can weigh in favor of the farmers — to cut down the bureaucratic red tape so that genuine economic freedom on their part can be

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realized. Nothing can be more economically stifling than to condemn the use of the land to only one – agricultural – and to deny the FWBs the best economic use of the land for such a prolonged period of time.

We must also not lose sight of the fact that 3,290 hectares of the Hacienda Luisita lands have already been reclassified into non-agricultural uses — industrial, commercial and residential — by the then municipality of Tarlac (which is now a city). If there would again be any application of the equity jurisdiction of the court, it is here where equity can be applied, and the farmers must be allowed to take advantage of this upgraded classification.

I have also proposed that the just compensation to TADECO/ HLI be fixed at the current fair market value, as defined by laws, regulations and jurisprudence, which is at the time of the taking. This is the only logical conclusion from the *ponencia* of Justice Presbitero J. Velasco, Jr. and the opinion of Justice Brion — both of them, and I would require petitioner HLI, to return to the FWBs the proceeds from the sale of the lands sold or transferred at the then prevailing market rates. The Decision and those Opinions therefore fix the just compensation at "fair market value," at the time when the transfer transaction took place, precisely for the reason that they recognize that the purchase price is the just compensation. It is not fair to require TADECO or petitioner HLI to accept less than fair market value if what is being required from them is the payment to the qualified FWBs of the proceeds of the sale of those lands earlier sold or disposed of *at fair market value*. There is an objection that to peg the just compensation at fair market value would mean HLI lands would be prohibitively expensive for the FWBs to acquire and thus they can never pay off the purchase price therefor. But to rule otherwise is unjust to HLI and contrary to the statutory requirement of payment to landowners of just compensation at fair market value. It is for DAR to facilitate all kinds of economic arrangements whereby the farmers can ultimately pay off the value of the land, including the direct transfer of the land to buyers.

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I did not go the route proposed by Justice Brion that the just compensation be fixed as of 11 May 1989, and that TADECO or petitioner HLI not be awarded any interest on the amount they should have been paid. There would be injustice in such a proposal, because not only is this approach inconsistent with Justice Brion's position that the market price paid by LIPCO be given to the FWBs, there have already been many improvements introduced by TADECO or petitioner HLI since that time, and to deny them compensation for the value either of those industrial fruits (the improvements) or of the civil fruits (interest on the just compensation) would be seriously unjust. Regardless of the history of the land, improvements have been introduced by TADECO/HLI for which this Court must allow compensation.

It is not right for this Court to distinguish between two classes of persons whose lands the law has subjected to expropriation — by virtue of either compulsory acquisition under CARL or other lawful confiscatory power such as eminent domain — and then to condemn CARL original landowners to an inferior position by denying them compensation at fair market value *vis-a-vis* others whose properties are subjected to compulsory acquisition, but not by land reform. Let this be an acid test for the government — whether it wants and is able to abide by a standard of fairness applicable to all kinds of landowners.

FACTUAL ANTECEDENTS

On 15 June 1988, the CARL took effect.[1] The CARL was enacted to promote social justice for landless farmers and provide "a more equitable distribution and ownership of land with due regard to the rights of landowners to just compensation and to the ecological needs of the nation."[2] The CARL is "a social justice and poverty alleviation program which seeks to empower the lives of agrarian reform beneficiaries through equitable

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[1] *Natalia Realty v. DAR*, G.R. No. 103302, 12 August 1993, 225 SCRA 278.

[2] *Land Bank of the Philippines v. De Abello, et al.*, G.R. No. 168631, 07 April 2009, 584 SCRA 342.

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distribution and ownership of the land based on the principle of land to the tiller."[3] It was designed to "liberate the Filipino farmer from the shackles of landlordism and transform him into a self-reliant citizen who will participate responsibly in the affairs of the nation."[4]

Under the CARL, corporations that own agricultural lands have two options:

(a) Land transfer option — voluntarily transfer the ownership of the land to the government or to qualified beneficiaries; or

(b) Stock distribution option — divest or give qualified beneficiaries capital stocks in proportion to the value of the agricultural lands devoted to agricultural activities relative to the company's total assets.[5]

Tarlac Development Corporation (TADECO), a domestic corporation principally engaged in agricultural pursuits, owned and operated a farm, known as Hacienda Luisita, which was covered under the CARL.[6] Hacienda Luisita is a 6,443-hectare agricultural land[7] that straddles the municipalities of Tarlac, Concepcion and La Paz in Tarlac province.[8] At the time, there were 6,296 farm workers, who were qualified as beneficiaries (hereinafter FWBs) under the CARL.[9]

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[3] *Heirs of Aurelio Reyes v. Garilao*, G.R. No. 136466, 25 November 2009, 605 SCRA 294.

[4] Jeffrey M. Riedinger, *AGRARIAN REFORM IN THE PHILIPPINES* (Stanford University Press 1995) at 117.

[5] CARL, Sec. 29 and 31.

[6] CARL, Sec. 4.

[7] Petitioner HLI's Memorandum dated 23 September 2010, at 2, citing "The Factual Back[d]rop of the Hacienda Luisita Case" contained in the memorandum filed by Solicitor General Francisco Chavez in the Court of Appeals, *Republic of the Philippines v. Tarlac Development Corporation, et al.*, CA-G.R. No. 08634 (*rollo*, Vol. 3, at 3644); See also Private Respondent FARM's Memorandum dated 24 September 2010, at 55-56; *rollo*, Vol. 3, at 3859-3860.

[8] Terminal Report dated 22 September 2005; *rollo*, Vol. 1, at 386.

[9] Public Respondent PARC Comment at 3; *rollo*, Vol. 1, at 336.

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The management of TADECO and the FWBs, allegedly, agreed to a stock distribution plan instead of a land transfer. To facilitate the plan, both parties agreed to create a spin-off corporation that would receive the agricultural lands and farm related-properties from TADECO.[10] In exchange, FWBs would be given shares in the spin-off corporation in proportion to the value of the agricultural lands.[11]

Thus, TADECO formed and organized a spin-off corporation — Hacienda Luisita, Inc., (HLI), which is the petitioner in the instant case.[12] Petitioner HLI's primary purpose was to engage in and carry on the business of planting, cultivation, production, purchase, sale, barter or exchange of all agricultural products and to own, operate, buy, sell, and receive as security lands to raise such products or as reasonably and necessarily required by the transaction of the lawful business of the corporation.[13]

On 22 March 1989, TADECO assigned and conveyed to petitioner HLI approximately 4,916 hectares of agricultural lands[14]

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[10] "WHEREAS, to facilitate stock acquisition by the farmworkers and at the same time give them greater benefits than if the agricultural land were to be divided among them instead, the FIRST PARTY caused the in-corporation and organization of the SECOND PARTY as the spin-off corporation **to whom it has transferred and conveyed the agricultural portions of Hacienda Luisita and other farm-related properties in exchange for shares of stock of the latter**, . . ." (SDOA, Whereas Clause [*rollo*, Vol.1, at 148])

[11] *Id.*

[12] On 23 August 1988, petitioner HLI was registered with the Securities and Exchange Commission. (2008 General Information Sheet of HLI; *rollo*, Vol. 2, at 2200-2207)

[13] Amended Article of Incorporation of petitioner HLI; *rollo*, Vol. 3, at 3762-3776.

[14] "WHEREAS, in view of the fact that the part of Hacienda Luisita devoted to agriculture, consisting **approximately 4,915.75 hectares**, if divided and distributed among more or less 7,000 farmworkers as potential beneficiaries, would not be adequate to give the said farmworkers a decent means of livelihood, the FIRST PARTY and the THIRD PARTY agreed to resort to distribution of shares of stock to the beneficiaries the better and more equitable mode of compliance with the C.A.R.P. …" (SDOA, Whereas Clause [*rollo*, Vol.1, at 148])

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and other properties related to the former's agricultural operations in exchange for shares of stock in the spin-off corporation.[15]

On 11 May 1989, petitioner HLI and TADECO entered into a Memorandum of Agreement with the FWBs for a stock distribution option with respect to the agricultural lands in Hacienda Luisita.[16] The SDOA provides that:

1. The percentage of the value of the agricultural land of Hacienda Luisita (₱196,630,000.00) in relation to the total assets (₱590,554,220.00) transferred and conveyed to the SECOND PARTY [petitioner HLI] is **33.296%** that, under the law, is the proportion of the outstanding capital stock of the SECOND PARTY, which is ₱355,531,462.00 or 355,531,462 shares with a par value of ₱1.00 per share, that has to be distributed to the THIRD PARTY [FWBs] under the stock distribution plan, **the said 33.296% thereof being ₱118,391,976.85 or 118,391,976.85 shares**.

2. The **qualified beneficiaries of the stock distribution plan shall be the farmworkers who appear in the annual payroll**, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by the SECOND PARTY.

3. At the end of each fiscal year, for a period of 30 years, the SECOND PARTY shall arrange with the FIRST PARTY [TADECO] the acquisition and distribution to the THIRD PARTY **on the basis of number of days worked and at no cost to them of one-thirtieth (1/30) of 118,391,976.85 shares of the capital stock** of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,976.85 shares shall have been completely acquired and distributed to the THIRD PARTY.

4. The SECOND PARTY shall guarantee to the qualified beneficiaries of the stock distribution plan that every year they will

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[15] "WHEREAS, the FIRST PARTY has transferred and conveyed to the SECOND PARTY the said agricultural land of Hacienda Luisita and other properties necessary for its operation at an appraised valuation of ₱590,554,220.00, the value of the agricultural land being ₱196,630,000.00 and the other assets, ₱393,924,220.00, which valuations have been appraised and approved in principle by the Securities and Exchange Commission. …" (SDOA, Whereas Clause [*rollo*, Vol.1, at 148]; See Public Respondent PARC Comment at 3 [*rollo*, Vol. 1, at 336])

[16] SDOA dated 11 May 1989; *rollo*, Vol. 1, at 147-150.

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receive, on top of their regular compensation, an amount that approximates the equivalent of **three (3%) percent of the total gross sales** from the production of the agricultural land, whether it be in the form of cash dividends or incentive bonuses or both.

5. Even if only a part or fraction of the shares earmarked for distribution will have been acquired from the FIRST PARTY and distributed to the THIRD PARTY, the FIRST PARTY shall execute at the beginning of each fiscal year an irrevocable proxy, valid and effective for one (1) year, in favor of the farmworkers appearing as shareholders of the SECOND PARTY at the start of the said year which will empower the THIRD PARTY or their representative to vote in stockholders' and board of directors' meetings of the SECOND PARTY convened during the year the entire 33.296% of the outstanding capital stock of the SECOND PARTY earmarked for distribution and thus be able to **gain such number of seats in the board of directors** of the SECOND PARTY that the whole 33.296% of the shares subject to distribution will be entitled to.

6. In addition, the SECOND PARTY shall within a reasonable time subdivide and allocate for free and without charge among the qualified family-beneficiaries residing in the place where the agricultural land is situated, **residential or homelots** of not more than 240 sq.m. each, with each family-beneficiary being assured of receiving and owning a homelot in the *barangay* where it actually resides on the date of the execution of this Agreement.

7. This Agreement is entered into by the parties herein in the spirit of the Comprehensive Agrarian Reform Program (C.A.R.P.) of the government and with the supervision of the Department of Agrarian Reform, with the end in view of improving the lot of the qualified beneficiaries of the stock distribution plan and obtaining for them greater benefits. (Emphasis supplied)

In brief, the FWBs were entitled to 33.29% of the total capital stock of petitioner HLI, the equivalent of the value of the agricultural lands compared with its total assets.[17] Since petitioner HLI's outstanding capital shares of stock amounted to a total of 355,531,462, the FWBs were entitled to 118,391,976.85

[17] The value of petitioner HLI's agricultural land was pegged at ₱196,630,000. If compared to the claimed total assets worth ₱590,554,220, then the agricultural land is 33.296% of petitioner HLI's assets.

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shares under the SDOA.[18] These shares were to be distributed for free at the end of each fiscal year for a period of thirty years to qualified FWBs on the basis of "man-days."[19]

On 28 September 1989, the government conducted a consultative meeting for the benefit of the leaders of the FWBs in Hacienda Luisita, where they were presented with the various options available under the Comprehensive Agrarian Reform Program (CARP) and the salient features of the possible business arrangements under the land distribution option.[20] Subsequently, an information campaign was conducted in the ten affected *barangays* to explain to the FWBs the different schemes of ownership under the land transfer option and other options available under the CARP.[21]

The SDOA was signed by 5,898 FWBs out of a total work force of 6,296 FWBs, or 92.9% of the FWBs.[22] Subsequently, a referendum was conducted by public respondent Department of Agrarian Reform (DAR) where 5,117 out of the 5,315 FWBs participating voted in favor of the stock distribution; only 132 FWBs preferred land transfer.[23] Thereafter, petitioner HLI submitted the SDOA for approval to the DAR.[24]

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[18] (355,531,462 total shares of stock) x (33.29% proportional share of FWBs) = 118,391,976.85 shares.

[19] Man-days refer to the number of days that a farmworker beneficiary has worked in relation to their entitlement to shares of stock under the SDOA. Some of the parties in the case employed the term "mandays" (Petitioner HLI's Consolidated Reply 29 May 2007, at 55-56) but we use its more readable form "man-days" in this Opinion.

[20] Inter-Agency Committee on Hacienda Luisita, Inc., Highlights of Consultative Meeting; *rollo,* Vol. 3, at 4015-4016.

[21] Minutes of Information Campaign Conducted; *rollo,* Vol. 3, at 4017-4024.

[22] Petition, par. 2, at 21 (*rollo,* Vol. 1, at 30); see also Terminal Report dated 22 September 2005, at 2 (*rollo,* Vol. 1, at 387).

[23] Petition, par. 3, at 22 (*rollo,* Vol. 1, at 31); Compliance dated 25 August 2009; (*rollo,* Vol. 2, at 2213-2492)

[24] Proposal for Stock Distribution under C.A.R.P. (May 1989); *rollo,* Vol. 3, at 3730-3748.

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On 06 November 1989, public respondent Presidential Agrarian Reform Council (PARC), through then DAR Secretary Miriam Defensor-Santiago, informed petitioner HLI of the favorable endorsement of the SDOA, but identified some issues for the latter's consideration and revision such as the mechanics of the stock distribution and the matter of the dilution of the shares.[25]

On 14 November 1989, petitioner HLI, in response, clarified to then DAR Secretary Defensor-Santiago several matters regarding the SDOA, specifically the dilution of the shares of FWBs, the mechanics for the distribution of the shares, the actual number of board seats, the distribution of home lots, and the three percent cash dividend.[26]

On 21 November 1989, public respondent PARC unanimously approved the SDOA of TADECO and petitioner HLI for the Hacienda Luisita farm.[27]

According to petitioner HLI,[28] from the time the SDOA was implemented in 1989, the FWBs received the following benefits under the stock distribution plan:

a. Three billion pesos — Salaries, wages and fringe benefits from 1989-2004;

b. Fifty-nine million pesos — Shares of stock in petitioner HLI given for free in fifteen (15) years, instead of thirty (30) years;[29]

c. One hundred fifty million pesos — Three percent (3%) share in the gross sales of the production of the agricultural lands of petitioner HLI;

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[25] PARC Letter dated 06 November 1989; *rollo*, Vol. 1, at 1308-1309.

[26] Letter dated 14 November 1989; *rollo*, Vol. 1, at 1310-1313.

[27] PARC Resolution No. 89-12-2 and PARC Letter dated 12 December 1989; *rollo*, Vol. 1, at 151-152.

[28] Petition, par. 5, at 22-23; *rollo*, Vol. 1, at 31-32.

[29] On 22 April 2005, petitioner HLI completed the distribution of 3,433,167 shares of stock corresponding to Crop Year 2003-2004 to all its existing stockholders of record as of June 2004. (Petitioner HLI Letter dated 09 June 2005 [*rollo*, Vol. 1, at 193])

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d. Thirty-seven million five hundred thousand pesos — Three percent (3%) share from the proceeds of the sale of lands;

e. Home lots of two hundred forty square meters each to 3,274 families of FWBs for free;[30] and

f. Other benefits.[31]

On 10 August 1995, petitioner HLI applied for the conversion of five hundred (500) hectares of agricultural lands, which were part of the 4,916 hectares in the Hacienda Luisita farm, subject of the SDOA.[32]

The affected FWBs filed their statement of support for the application for conversion with the DAR.[33] The application was also unanimously approved by the four directors in the Board of petitioner HLI, who represented the stockholder FWBs.[34]

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[30] Out of these FWBs, 2,362 have allegedly received titles to their lots from the Register of Deeds. (Petition at par. 5(e), 23 [*rollo*, Vol. 1, at 32])

[31] Other benefits include: free hospital and medical services for FWBs and their spouses, children and parents; vacation and sick leaves; amelioration bonus; school bus allowance for dependents; emergency relief allowance; maternity benefits; financial benefits due to old age/death; unused sick leave conversion; and various loans.

[32] The lands applied for conversion were covered under Original Certificate of Title/Transfer Certificate of Title Nos. 258719, 240197 and 236741, with an area of 149.7733 hectares, 8.7763 hectares and 1,594.2008 hectares, respectively. (*rollo*, Vol. 1, at 647-650; see also Petition at par. 5(f), 23 [*rollo*, Vol. 1, at 32] and TCT Nos. 240197, 258719 and 236741 [*rollo*, Vol. 2, at 1423-1468])

[33] "The proposed conversion has the support or concurrence of the affected FWBs as verified by the PLUTC [PARC Land Use Technical Committee] Inspection Team." (DAR Conversion Order No. 0306017074-764-95, Series of 1996, at 9-11 [*rollo*, Vol. 1, at 659-661]; see also RCBC Petition-in-Intervention dated 18 October 2007, par. 4.1 at 13 [*rollo*, Vol. 2, at 1372] and *Manipesto ng Pagsuporta* [*rollo*, Vol. 1, at 1327-1328]).

[34] "The eleven (11) directors, including the four directors (representing the farmer-beneficiaries, namely: Ernesto Sangil, Jose Cabilangan, Felimon Salas, Jr., and Jose Buneo Navarro) approved HLI's plan to convert 500 hectares into an industrial estate (300 hectares) and medium to low-cost residential area (200 hectares)." (DAR Conversion Order No. 0306017074-764-95, Series of 1996, at 3 [*rollo*, Vol. 1, at 653]; see also RCBC Petition-in-Intervention dated 18 October 2007, par. 4.2 at 13 [*rollo*, Vol. 2, at 1372])

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On 01 September 1995, the Sangguniang Bayan of Tarlac approved the integration and/or inclusion of the Luisita Land Use Plan in the general zoning map of the then Municipality of Tarlac and thus reclassified three thousand two hundred ninety (3,290) hectares of the Hacienda Luisita land from agricultural to commercial, industrial and residential purposes, the land reclassification being required before approval of the application for conversion.[35]

On 14 August 1996, the DAR approved the application for conversion and reclassified 500 hectares of Hacienda Luisita agricultural lands into industrial use.[36]

Petitioner HLI transferred and sold two hundred (200) hectares of the converted industrial lands to Luisita Realty Inc.,[37] for a total amount of ₱500,000,000.[38]

Meanwhile, the old titles covering the remaining 300 hectares of converted lands were cancelled and a new consolidated title was issued in the name of petitioner HLI over that portion of the land.[39] On 13 December 1996, petitioner HLI assigned the same 300-hectare property[40] to Centennary Holdings, Inc., in

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[35] Sangguniang Bayan Resolution No. 280 dated 01 September 1995 (*rollo,* Vol. 3, at 3594-3595); Supervisory Group and AMBALA Comment/ Opposition dated 17 December 2006, par. 7.1, at 16 (*rollo,* Vol. 1, at 545); RCBC Petition-in-Intervention dated 18 October 2007, par. 5 at 13 (*rollo,* Vol. 2, at 1372).

[36] DARCO Conversion Order No. 030601074-764-(95), Series of 1996; *rollo,* Vol. 1, at 651-664.

[37] RCBC Petition-in-Intervention dated 18 October 2007, at 3; *rollo,* Vol. 2, at 1362.

[38] The first 100 hectares covered under TCT No. 287909 were sold on 24 June 1997 for ₱250,000,000 and the remaining 100 hectares under the same title were sold on 27 June 1997 also for ₱250,000,000. (Deeds of Absolute Sale; *rollo,* Vol. 3, at 3753-3756)

[39] TCT Nos. 236741, 258718, 258719 and 240197 were cancelled and TCT No. 287910 was issued. (*Rollo,* Vol. 2, at 1483-1484)

[40] This three hundred hectare portion of land was covered under Transfer Certificate of Title No. 287910.

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exchange for 12,000,000 shares in the latter's company.[41] A new certificate of title was subsequently issued in the name of Centennary Holdings.[42]

Thereafter, petitioner HLI entered into a Joint Venture Agreement with other corporate entities[43] to form Luisita Industrial Park Corporation (LIPCO), which was envisioned to be the corporate vehicle that would purchase and develop the converted industrial land in Hacienda Luisita.[44] After it was created and organized, LIPCO agreed to develop the 300-hectare property into a first-class industrial estate[45] and purchased the property from Centennary Holdings for ₱750,000,000.[46]

Under the contract of sale, Centennary Holdings guaranteed that there were no third parties with any right or claim over the property[47] and that it had duly obtained a valid conversion of the property for use as an industrial estate.[48] Moreover, LIPCO alleged that at the time it acquired the property from Centennary

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[41] Deed of Conveyance and Exchange dated 13 December 1996; *rollo*, Vol. 2, at 1485-1487.

[42] TCT No. 292091; *rollo*, Vol. 2, at 1492-1493.

[43] These corporate entities include two domestic corporations (Rizal Commercial Banking Corporation and Aguila Holdings, Inc.), and a Japanese corporation (Itochu Corporation).

[44] Joint Venture Agreement dated 14 October 1996; *rollo*, Vol. 3, at 4313-4342.

[45] Memorandum of Agreement dated 12 November 1997; *rollo*, Vol. 2, at 1494-1498.

[46] Deed of Absolute Sale dated 30 July 1998 (*rollo*, Vol. 2, at 1499-1509) and Supplemental to Deed of Absolute Sale dated 01 February 2000 (*rollo*, Vol. 2, at 1510-1513).

[47] "SELLER's Warranties — The SELLER warrants to the BUYER the following: x x x (b) There are no third parties with any right or claim whatsoever over the Property; . . ." (Deed of Absolute Sale dated 30 July 1998, at 3; *rollo*, Vol. 2, at 1501)

[48] ". . . (d) At the time of the execution of this Agreement, the SELLER has duly obtained a valid Department of Agrarian Reform Conversion Certificate that the Property is classified for us as an industrial estate; x x x" (Deed of Absolute Sale dated 30 July 1998, at 4; *rollo*, Vol. 2, at 1502)

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Holdings, the only annotations found in the title were the Secretary's Certificate in favor of Teresita Lopa, the Secretary's Certificate in favor of Shintaro Murai and the conversion of the property from agricultural to industrial and residential use.[49]

Pursuant to the sale, a new title was issued in the name of LIPCO covering the 300 hectare property.[50] This title was later on amended to account for the partial subdivision of the 300 hectare property into two separate lots of 180 hectares and 4 hectares covered by two separate titles.[51] The remaining 115 hectares of the original property remained under LIPCO's original title.[52]

In October 1996, LIPCO mortgaged its property in Hacienda Luisita to Rizal Commercial Banking Corporation (RCBC) to guaranty the payment of a ₱300,000,000 loan, which was annotated in LIPCO's title over the property.[53]

The entire 300-hectare industrial estate was thereafter designated by then President Fidel Ramos as a special economic zone (the Luisita Industrial Park II) by virtue of his powers under the Special Economic Zone Act of 1995.[54] The same

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[49] LIPCO Petition-in-intervention dated 22 November 2007, par. 10, at 14; *rollo,* Vol. 2, at 1558.

[50] TCT No. 310986; *rollo,* Vol. 2, at 1514-1518.

[51] TCT No. 365800 covering one hundred eighty (180) hectares (*rollo,* Vol. 2, at 1519-1520) and TCT No. 365801 covering four hectares (*rollo,* Vol. 1, at 1521-1522).

[52] LIPCO's Petition for Intervention dated 22 November 2007, par. 12.2, at 15; *rollo,* Vol. 2, at 1559.

[53] Real Estate Mortgage (*rollo,* Vol. 3, at 3420-3423); RCBC's Motion for Leave to Intervene dated 18 October 2007, par. 3.4, at 3 (*rollo,* Vol. 2, at 1352); RCBC's Petition-in-Intervention dated 18 October 2007, par. 9.1, at 17 (*rollo,* Vol. 2, at 1376).

[54] "Upon the recommendation of the Philippine Economic Zone Authority, and pursuant to the powers vested in me by law, I, FIDEL V. RAMOS, President of the Republic of the Philippines, and by virtue of the Special Economic Zone Act of 1995, do hereby designate the following parcels of **private lands in Barangay San Miguel, Municipality of Tarlac, Province**

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industrial estate project of LIPCO over the 300-hectare land in Hacienda Luisita was also endorsed and supported by the Sangguniang Bayan of the Municipality of Tarlac.[55]

LIPCO claims that from 1998 to 2001, it made developments to the 300-hectare property through its contractor, Hazama Philippines, Inc., which included main roads and sub-roads with proper drainage, a power control house, deep well and water tanks, a drainage reservoir and sewerage treatment plant, a telecommunication system, underground electrical distribution lines, concrete perimeter security fences, and a security house.[56] LIPCO further alleges that it paid US$14,782,956.20 to its contractor for the said improvements and developments to the land.[57]

On 25 November 2004, LIPCO assigned and transferred through a *dacion en pago* the two subdivided lands in Hacienda Luisita to RCBC as full payment for its loan amounting to ₱431,695,732.10.[58] LIPCO's titles to these two subdivided lots were subsequently transferred to RCBC.[59] At the time of the *dacion en pago*, RCBC claimed that there was no annotation in the titles of the two subdivided properties which showed that there was any controversy or adverse claim, except for the deed

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of Tarlac, as Luisita Industrial Park II, consisting of THREE HUNDRED (300) HECTARES, more or less, as defined by the herein technical description: . . ." (Presidential Proclamation No. 1207 dated 22 April 1998 [*rollo*, Vol. 3, at 3400-3402]; see also Certificate of Registration No. EZ-98-05 [*rollo*, Vol. 3, at 3403])

[55] Sangguniang Bayan Resolution No. 392 dated 16 December 1996; *rollo*, Vol. 3, at 4355.

[56] Petitioner-in-Intervention LIPCO's Memorandum dated 23 September 2010, par. 17, at 7; *see also* Annex "X-series" of the Memorandum.

[57] Petitioner-in-Intervention LIPCO's Memorandum dated 23 September 2010, par. 73.1, at 41.

[58] Deed of Absolute Assignment; *rollo*, Vol. 2, at 1523-1527.

[59] TCT Nos. 365800 and 365801 in the name of LIPCO were cancelled and new titles (TCT Nos. 391051 and 391052) were issued in the name of RCBC. (*Rollo*, Vol. 2, at 1528-1533)

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of restrictions and its own real estate mortgage over the properties.[60]

In November 2009, the Bases Conversion Development Authority (BCDA) acquired approximately 84 hectares of the property as a right-of-way for a segment of the SCTEX (Subic-Clark-Tarlac-Expressway).[61] An interchange was also constructed on a portion of the Tarlac-Clark segment traversing petitioner's landholdings, for which the government paid ₱80,000,000 as just compensation to petitioner HLI.[62] The legal issue relevant to this portion of the land and its use and expropriation by the government was never expounded in full in the proceedings of the case, but petitioner HLI introduced the matter by manifesting that it in fact distributed 3% of the ₱80,000,000 to the FWBs. This assertion, however, is not included in the certified true report submitted by Jose Cojuangco & Sons Organizations - Tarlac Operations,[63] as the report detailed all the amounts HLI gave to its workers only from 1989 to 2005.[64]

PROCEEDINGS IN THE PARC

On 14 October 2003, the Supervisory Group of HLI (Supervisory Group) filed a "Petition/Protest" with public respondent PARC, praying for the renegotiation of the SDOA, or alternatively, the distribution of petitioner HLI's agricultural lands to the FWBs.[65]

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[60] RCBC's Motion for Leave to Intervene dated 18 October 2007, par. 3.9, at 4 (*rollo*, Vol. 2, at 1353); RCBC's Petition-in-Intervention dated 18 October 2007, par. 16, at 21 (*rollo*, Vol. 2, at 1380).

[61] Petition dated 30 January 2006; *rollo*, Vol. 1, at 59. See also SCTEX *project cost escalation, land valuation questioned*, http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=1231, as cited in footnote 161 of the Decision, at 78.

[62] *Id.*

[63] Attached as Annex "G" of petitioner's Memorandum.

[64] Prepared by the finance manager, captioned as "Hacienda Luisita, Inc. Salaries, Benefits and Credit Privileges (in Thousand pesos) Since the Stock Option was Approved by PARC/CARP," *rollo*, Vol. 3, at 3676.

[65] "1. To have a renegotiations of the Memorandum of Agreement the soonest possible time in order to cope up with the demands of time wherein

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The petition/protest of the Supervisory Group, led by Jose Julio Zuñiga and Windsor Andaya, contained sixty-two signatures of persons, who claimed to be supervisors in Hacienda Luisita and who held shares in petitioner HLI.[66]

Petitioner HLI filed an Answer dated 04 November 2004,[67] resisting the demands of the Supervisory Group and reiterating that the SDOA is "impervious to any nullification, termination, abrogation, or renegotiation" since the provisions of the law and the rules have been complied with.[68]

On 04 December 2003, private respondent Alyansang Mangagawang Bukid ng Hacienda Luisita (AMBALA) filed a separate "Petisyon" in the Department of Agrarian Reform.[69] Private respondent AMBALA made a similar prayer for the revocation of the SDOA in Hacienda Luisita. Rene Galang and Noel Mallari, who were the President and Vice President of AMBALA, respectively, signed the petition.[70] Petitioner HLI consequently filed an Answer to the AMBALA petition.[71]

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our rights must be properly recognized by delivering to us what is due to us which must be strictly followed by HLI; . . ."

"6. We will be moving for the immediate implementation of the law to have the portions so far covered under the CARP be finally distributed to the HLI farmers in general if only to protect our long awaited dreams to come into reality." (*Rollo,* Vol. 1, at 155-156)

[66] *Rollo,* Vol. 1, at 157-158.

[67] *Rollo,* Vol. 1, at 159-174.

[68] ". . . HLI would like to reiterate its position that its Stock Distribution Option (SDO) is impervious to any nullification, termination, abrogation, renegotiation or any appellation its detractors [may] want to christen their move. For how could they ask for the cancellation of an SDO (and its Certificate of Compliance) that has strictly complied with the provisions of both Rep. Act No. 6657 and its implementing rules under Administrative Order No. 10 on stock distribution?" (*Id.* at 172)

[69] "Petisyon (Para sa Pagpapawalang Bisa sa Stock Distribution Option [SDO], Pagpapatigil sa Pagpapalit Gamit ng Lupa at Pamamahagi ng Lupaing Napapaloob sa Hacienda Luisita, Inc.)"; *rollo,* Vol. 1, at 369-375.

[70] *Rollo,* Vol. 1, at 379.

[71] Opposition dated 21 January 2005; *rollo,* Vol. 1, at 184-192.

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On 22 November 2004, then DAR Secretary Rene Villa created a Special Task Force on the Hacienda Luisita stock distribution option plan to review the terms and conditions of the SDOA, and evaluate the compliance reports and the merits of the two petitions.[72] On 15 August 2005, the DAR created a Special Team to reinforce the Special Task Force.

On 22 September 2005, the DAR's Special Team issued the Terminal Report, where it found that petitioner HLI had not complied with its obligations under the law on the implementation of the stock distribution plan.[73] Specifically, the Terminal Report identified the following defects and violations:[74] (a) absence of the certificate of compliance since the stock distribution option plan had yet to be fully completed; (b) the prolonged implementation of the distribution of shares to FWBs for a thirty-year period; (c) conversion of portions of the Hacienda Luisita farm (500 hectares) for non-agricultural uses; and (d) distribution of shares based on the number of days worked by the FWBs.

On 30 September 2005, the DAR Secretary, using the Terminal Report as basis, recommended to the PARC Executive Committee the recall/revocation of the approval of the SDOA and the compulsory acquisition of petitioner HLI's agricultural lands. In reply to the DAR Secretary's recommendations, the PARC Executive Committee created a PARC ExCom Validation Committee to review and validate the DAR Secretary's findings.[75]

On 12 October 2005, fourteen FWBs allegedly filed their position paper before the PARC assailing its failure to tackle the constitutionality of Section 31 of the CARL and limiting its basis for invalidating the SDOA for violating the said provision and its implementing rules.[76]

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[72] DAR Special Order No. 789, Series of 2004; *rollo,* Vol. 1, at 679-680.

[73] *Rollo,* Vol. 1, at 386-405.

[74] Terminal Report at 14-19; *rollo,* Vol. 1, at 399-404.

[75] PARC Resolution No. 2005-SP-01.

[76] Respondent-intervenor FARM's Memorandum dated 24 September 2010, at 11; *rollo,* Vol. 3, at 3816.

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On 29 November 2005, private respondents Supervisory Group and AMBALA, through Atty. Jobert Pahilga of the Sentro Para sa Tunay na Repormang Agraryo Foundation (SENTRA), filed their Memorandum arguing that the SDOA with petitioner HLI was a "big mistake and a monumental failure."[77] The constitutionality of the CARL's provisions allowing for the stock distribution option itself was, however, not raised.

On 22 December 2005, after conducting hearings and receiving the memoranda filed by the parties, the PARC issued Resolution No. 2005-32-01 (the questioned PARC Resolution), which affirmed the recommendation to recall/revoke the stock distribution plan of TADECO and petitioner HLI, and placed their lands under compulsory coverage or mandated land acquisition scheme of the CARP. The dispositive portion of the questioned PARC Resolution reads:

> NOW, THEREFORE, on motion duly seconded, RESOLVED, as it is HEREBY RESOLVED, to approve and confirm the recommendation of the PARC Executive Committee adopting *in toto* the report of the PARC ExCom Validation Committee affirming the recommendation of the DAR **to recall/revoke the SDO plan of Tarlac Development Corporation/Hacienda Luisita Incorporated**.
>
> RESOLVED, further, that the lands subject of the recalled/revoked TDC/HLI SDO plan be forthwith **placed under compulsory coverage or mandated land acquisition scheme** of the Comprehensive Agrarian Reform Program.[78] (Emphasis supplied)

Pursuant to the questioned PARC Resolution, then DAR Secretary Nasser Pangandaman (public respondent Pangandaman) ordered the acquisition and distribution of the entire agricultural landholdings of petitioner HLI under the compulsory acquisition scheme of the CARL.[79]

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[77] Private respondents Supervisory Group and AMBALA Memorandum dated 25 November 2005; *rollo*, Vol. 1, at 711-729.

[78] PARC Resolution No. 2005-32-01; *rollo*, Vol. 1, at 100-101.

[79] "Pursuant to the decision of the Presidential Agrarian Reform (PARC), as contained in the PARC Resolution No. 05-32-01 S.2005, revoking/recalling

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On 02 January 2006, petitioner HLI moved for a reconsideration of the PARC Resolution.[80] Private respondents Supervisory Group and AMBALA, together with the United Luisita Worker's Union (ULWU) as intervenor, consequently filed their opposition to petitioner HLI's motion for reconsideration.[81]

The DAR subsequently issued several notices of coverage over the lands in Hacienda Luisita in the name of TADECO/HLI:

Table of Covered Lands of Hacienda Luisita

Location	Pasajes, Municipality of Concepcion[82]	San Miguel, Luisita, Ungot and Bantog in Tarlac[83]	Dumarals, Sierra, Lapaz[84]
Grand Total of Areas under the Titles (in hectares)	1,909.5365	2,736.6949	1,291.9457
Cancelled	98.7511	690.1578	236.8159
Canal/Road	1.1736	6.8949	30.5083
Capable	1,809.6118	2,069.6422[85]	1,024.6215

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the Stock Distribution Scheme granted to Hacienda Luisita Inc., you are hereby directed to immediately initiate appropriate action to acquire and distribute the entire Hacienda Luisita agricultural landholding under the Compulsory Acquisition Scheme of the Comprehensive Agrarian Reform Program, subject to the retention limits prescribed under R.A. 6657, as amended." (Respondent Pangandaman's DAR Memorandum dated 23 December 2005 [*rollo*, Vol. 1, at 213]; see also Memorandum dated 27 December 2005 of Undersecretary Narciso Nieto [*rollo*, Vol. 1, at 214])

[80] *Rollo*, Vol. 1, at 107-143.

[81] Opposition to Motion for Reconsideration and Motion for Immediate and Expeditious Execution of PARC Resolution dated 16 January 2006, filed by Atty. Jobert Pahilga of SENTRA and Atty. Romeo Capulong of the Public Interest Law Center. (*Rollo*, Vol. 1, at 771-781)

[82] Notice of Coverage dated 02 January 2006; *rollo*, Vol. 2, at 1407-1409.

[83] Notice of Coverage dated 02 January 2006; *rollo*, Vol. 2, at 1410-1414.

[84] Notice of Coverage dated 02 January 2006; *rollo*, Vol. 1, at 103-106 and *rollo*, Vol. 2, at 1415-1418.

[85] This Notice of Coverage identified TCT No. 236741 in the name of petitioner HLI, a portion of which (341.4507 hectares) was ordered converted

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The Hacienda Luisita lands in these notices of coverage also embraced the 300-hectare lot that was earlier converted by the DAR for industrial use and now titled in the name of LIPCO, including the two titles transferred to RCBC through a *dacion en pago*.[86] However, the DAR *motu proprio* desisted from implementing the order of compulsory coverage over the said lands, in spite of the notices of coverage.[87]

Acting on the pending motion for reconsideration, the PARC Excom Validation Committee — headed by Undersecretary Ernesto Pineda of the Department of Justice — recommended the dismissal of petitioner HLI's motion.[88] This recommendation was adopted *in toto* by the PARC Council.[89]

Thereafter, 5,364 individuals claiming to be *bona fide* FWBs signed and filed with the DAR hundreds of separate petitions.[90] All of them claimed that they had freely entered the SDOA with petitioner HLI and prayed that the SDOA not be cancelled by the DAR.

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by the DAR for industrial use. (TCT No. 236741 [*rollo,* Vol. 2, at 1427-1468]; DAR Conversion Order No. 0306017074-764-95, Series of 1996 [*rollo,* Vol. 1, at 651-664]) It likewise covered several lots under TCT No. 310986 in the name of LIPCO, which were also converted to industrial lands. (TCT No. 310986 [*rollo,* Vol. 2, at 1715-1717]; LIPCO Petition-in-Intervention dated 22 November 2007, par. 3-5, at 17-19 [*rollo,* Vol. 2, at 1561-1563])

[86] RCBC's Petition-in-Intervention dated 18 October 2007, par. 21, at 24; *rollo,* Vol. 2, at 1383.

[87] "In the interest of substantial justice and orderly proceedings within the context of procedural due process, the directive to temporarily cease and desist from implementing the coverage is hereby reiterated and the same to remain effective until the matter is resolved." (DAR Memorandum dated 07 February 2006; *rollo,* Vol. 1, at 227)

[88] ExCom Validation Committee Resolution dated 24 March 2006; *rollo,* Vol. 1, at 408-423.

[89] PARC Council Resolution No. 2006-34-01 dated 03 May 2006; *rollo,* Vol. 1, at 407-424.

[90] A Petition to Maintain Stock Distribution Option Agreement and three hundred ten separate petitions entitled "Petisyon sa Kagawaran ng Repormang Pansakahan" filed by 5,364 FWBs. (*rollo,* Vol. 1, at 987-1307)

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PROCEEDINGS IN THE COURT

On 01 February 2006, without awaiting the resolution of its pending motion for reconsideration, petitioner HLI filed the instant Rule 65 Petition to nullify the questioned PARC Resolution.[91] Petitioner HLI included in the Petition a prayer for a temporary restraining order to hold the implementation of the questioned PARC Resolution, and to prevent compulsory coverage of the lands under the CARL. Despite the DAR's own order to cease and desist from implementing the Notices of Coverage, petitioner HLI, nevertheless, alleges that the DAR was still bent on implementing the questioned PARC Resolution.[92]

On 14 June 2006, the Court granted petitioner HLI's preliminary prayer for a temporary restraining order and enjoined public respondents from implementing the questioned PARC Resolution.[93]

On 13 July 2006, public respondents, through the Office of the Solicitor General, filed their Comment.[94]

On 05 December 2006, private respondent Noel Mallari filed a Manifestation and Motion with Comment Attached.[95] Private respondent Mallari manifested that he and other members of AMBALA had left the organization and founded the Farmworkers Agrarian Reform Movement, Inc. (FARM). Respondent Mallari was joined and supported by some other FWBs, who affixed their signatures in the Petition.[96] They prayed that the new organization be allowed to enter its appearance and/or intervene in the instant case, and that the instant Petition be dismissed. Respondent Mallari subsequently filed a supplement to the earlier

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[91] Petition; *rollo,* Vol. 1, at 3-193.

[92] Petitioner HLI Manifestation and Urgent Motion for Issuance of Temporary Restraining Order dated 18 May 2006; *rollo,* Vol. 1, at 233-254.

[93] Resolution; *rollo,* Vol. 1, at 257-259.

[94] *Rollo,* Vol. 1, at 334-428.

[95] *Rollo,* Vol. 1, at 436-519.

[96] *Rollo,* Vol. 1, at 460-517.

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comment, raising therein as a substantive issue the unconstitutionality of the stock distribution option under Section 31 of the CARL.[97]

On 22 December 2006, private respondents Supervisory Group[98] and AMBALA (Galang Group)[99] filed their own Comment/Opposition, through their counsel, Atty. Pahilga of SENTRA, who had earlier represented them in the PARC proceedings below.[100]

On 30 May 2007, petitioner HLI filed a Consolidated Reply[101] to the comments filed by the two private respondents[102] and public respondents.[103] Petitioner assailed the fact that private respondents did not actually represent *bona fide* FWBs, as shown by the numerous and separate petitions signed by 5,364 FWBs filed in the PARC, who had expressed their desire to maintain the SDOA.[104]

On 30 October 2007, petitioner-in-intervention RCBC moved to intervene in the instant case considering that the two subdivided lots of Hacienda Luisita that were transferred to it by virtue of the *dacion en pago* were included in the notices of coverage issued under the authority of the questioned PARC Resolution.[105] On 27 November 2007, LIPCO likewise moved to intervene in

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[97] "Section 31 of the Comprehensive Agrarian Reform Law is unconstitutional in so far as it fails to effect agrarian land reform that covers a redistribution of both wealth and power." (Supplemental Comment, through collaborating counsel Mary Ann dela Peña of the PEACE Foundation, Inc.; *rollo*, Vol. 1, at 822-837).

[98] The Supervisory Group was then represented by Windsor Andaya and Jose Julio Zuniga.

[99] AMBALA was then represented by Rene Galang.

[100] *Rollo*, Vol. 1, at 530-770.

[101] *Rollo*, Vol. 1, at 856-979.

[102] (a) Private respondents Supervisory Group and AMBALA; and (b) private respondents Mallari and FARM.

[103] Public respondents PARC and DAR Secretary.

[104] Consolidated Reply at 7-17; *rollo*, Vol. 1, at 862-872.

[105] *Rollo*, Vol. 2, at 1350-1533.

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the instant case, considering that the DAR's notices of coverage also included the balance of 115 hectares of converted industrial land under TCT No. 310986, which remained under its name.[106]

Public respondents filed their consolidated comment to the petitions-in-intervention of RCBC and LIPCO, arguing *inter alia* that the two intervenor corporations were not innocent purchasers of land and that TADECO and petitioner HLI reneged in this commitment to keep Hacienda Luisita "intact and unfragmented."[107] In contrast, petitioner HLI raised no objection to the intervention of RCBC and LIPCO. Thereafter, RCBC and LIPCO filed their respective replies to public respondent's consolidated comment.[108]

The Court then required: (a) petitioner HLI to submit certified true copies of the stock and transfer books submitted to the Securities and Exchange Commission showing compliance with the SDOA; and (b) the DAR Secretary to submit the list of qualified FWBs in Hacienda Luisita at the time the SDOA was signed on 11 May 1989.[109] In compliance, petitioner HLI submitted a summary of stock distribution to beneficiaries from 1989-1990 to 2003-2004, as follows:[110]

Summary of Shares of Stock Distribution CY – 1989-1990 to CY – 2003-2004				
Status	*CTR*	*Distributed Shares of Stock*	*Accelerated Shares of Stock*	*Total Shares of Stock*
Fortnightly	882	11,309,418	11,309,418	22,618,836
Weeklies	8,597	47,948,819	47,948,819	95,897,638

[106] *Rollo,* Vol. 2, at 1535-1734.

[107] *Rollo,* Vol. 2, at 1767-1793.

[108] LIPCO Reply dated 06 October 2008 (*rollo,* Vol. 2, at 1800-1829); RCBC Reply dated 12 September 2008 (*rollo,* Vol. 2, at 1835-1871).

[109] Resolution dated 01 June 2009; *rollo,* Vol. 2, at 1880-1881.

[110] Petitioner HLI's Compliance dated 07 July 2009; *rollo,* Vol. 2, at 1905-2208.

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Trash Project	2,476	104,374	104,374	208,748
TOTAL	**11,955**[111]	59,362,611	59,362,611	**118,725,222**[112]

Public respondents likewise presented to the Court a list of qualified FWBs who signed the SDOA on 11 May 1989.[113]

On 11 August 2010, petitioner HLI and private respondents AMBALA (principally through one of its factions, the "Mallari Group"),[114] the Supervisory Group[115] and the ULWU,[116] with the concurrence of TADECO, submitted to the Court a proposed compromise agreement for approval.[117] Under the proposed compromise agreement, the parties would respect the individual decisions of the FWBs as to whether they would stay with the stock distribution contained in the SDOA, or would proceed with land distribution.[118] Petitioner HLI subsequently manifested that based on a "census" conducted on 6-8 August 2010 among the allegedly 10,502 qualified FWBs, 7,302 voted for stock distribution and 139 voted for land distribution.[119]

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[111] The 11,955 recipients of the shares were later on "sanitized" by petitioner HLI and certified to be only **10,502 FWBs**, which is 1,453 less than the original number. (Certification dated 05 August 2010; *rollo*, Vol. 3, at 2612)

[112] Under the SDOA, the qualified FWBs were entitled only to **118,391,976.85 shares**, based on the proportional value of the agricultural land to the total value of all of petitioner HLI's assets.

[113] Public Respondents Compliance dated 25 August 2009; *rollo*, Vol. 2, at 2213-2492.

[114] Private respondent AMBALA was herein represented by Noel Mallari, who was previously identified in the Petition filed by him in the name of FARM.

[115] Private respondent Supervisory Group was represented by Julio Zuniga and Windsor Andaya.

[116] ULWU was represented by Eldifonso Pingol.

[117] Joint Submission and Motion for Approval of Attached Compromise Agreement dated 10 August 2010; *rollo*, Vol. 3, at 2898-2913.

[118] *Id.*

[119] Petitioner HLI's Manifestation and Motion dated 13 August 2010; *rollo*, Vol. 3, at 2917.

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On 11 August 2010, the three groups that signed the proposed compromise agreement, namely, AMBALA-Mallari Group, the Supervisory Group and ULWU, terminated the services of Atty. Pahilga of SENTRA. On 13 August 2010, Atty. Carmelito Santoyo entered his appearance as the new counsel for the three groups.

Private respondent AMBALA, now represented by Rene Galang (AMBALA-Galang Group), through the same Atty. Pahilga of SENTRA, submitted its opposition to the compromise agreement and argued that it was entered into without authority from the FWBs and contained stipulations contrary to law and public policy.[120] Thereafter, Atty. Capulong of the Public Interest Law Center[121] also entered his appearance as lead counsel for Rene Galang and as collaborating Counsel for AMBALA-Galang Group.[122]

Subsequently, the FARM group, through its counsel Atty. Christian Monsod of the Rights Network, moved to intervene in the instant case and sought permission to file their comment-in-intervention.[123] Although it participated through the manifestation and motion[124] previously filed by Noel Mallari, the FARM Group's latest comment-in-intervention was now signed by its officers and members led by Renato Lalic,[125] and excluded Mallari, who had apparently switched sides back to the AMBALA-Mallari Group and joined in the proposed compromise agreement with petitioner HLI.[126] FARM adopted

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[120] Private Respondent AMBALA's Comment/Opposition dated 16 August 2010; *rollo*, Vol. 3, at 2958-2987.

[121] Atty. Capulong of the Public Interest Law Center previously represented AMBALA, the Supervisory Group and ULWU in their consolidated opposition to the motion for reconsideration of petitioner HLI that was filed in the PARC.

[122] Entry of Appearance dated 14 September 2010; *rollo*, Vol. 3, at 3158.

[123] Lalic Group's Motion for Leave to Intervene with Comment-in-Intervention dated 16 August 2010; *rollo*, Vol. 3, at 2988-3009.

[124] Manifestation and Motion with Comment Attached; *rollo*, Vol. 1, at 436-519.

[125] There were 28 signatories to the FARM's Comment-in-Intervention. (*rollo*, Vol. 3, 3003-3006)

[126] FARM's Motion for Leave to Intervene with Comment-in-Intervention dated 16 August 2010, par. 4, at 2; *rollo*, Vol. 3, at 2989.

by reference the earlier manifestation filed on its behalf by Mallari, and prayed for the dismissal of the instant petition.[127] It likewise asked that Section 31 of CARL allowing for stock distribution to farmer beneficiaries be declared unconstitutional. In its Resolution dated 17 August 2010, the Court deferred action on the FARM Group's latest request for intervention.

The Court heard the parties on oral arguments on 18[128] and 24 August 2010.[129]

The Court also created a Special Committee to mediate between the contending parties.[130] However, they failed to reach an acceptable settlement. It must be emphasized that the creation of this Committee should not serve as an indicator of any Court policy on whether mediation can still be ordered in cases filed before it or where oral arguments have already been conducted. To clarify, the Court has **no existing policy** on such matters.

After the oral arguments, the Court required parties to submit their respective memoranda and documents relative thereto.[131] The parties filed the following:

a. Petitioner HLI's Memorandum dated 23 September 2010, praying for the reversal of the questioned PARC Resolution and declaring the notice of coverage null and void;[132]

b. Private respondents AMBALA-Mallari Group, ULWU (Eldifonso Pingol) and Supervisory Group (Zuñiga and Andaya) Memorandum dated 12 September 2010, through Atty. Santoyo, which prayed that the questioned PARC Resolution also be declared null and void and set aside, and the Compromise Agreement dated 06 August 2010 be approved;[133]

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[127] FARM's Comment-in-Intervention dated 16 August 2010, par. 2-3, at 7-5; *rollo,* Vol. 3, at 2997-2998.

[128] Resolution dated 27 July 2010; *rollo,* Vol. 3, at 2558-2559.

[129] Resolution dated 18 August 2010; *rollo,* Vol. 3, at 3024-3027.

[130] Resolution dated 31 August 2010; *rollo,* Vol. 3, at 3060-3062.

[131] Resolution dated 24 August 2010; *rollo,* Vol. 3, at 3055-3057.

[132] *Rollo,* Vol. 3, at 3635-3805.

[133] *Rollo,* Vol. 3, at 3215-3230.

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c. Private respondent AMBALA-Galang Group's Memorandum dated 21 September 2010, through Atty. Pahilga of SENTRA, praying for the affirmance of the questioned PARC Resolution and ordering the actual distribution of the agricultural lands to the FWBs;[134]

d. Private respondent AMBALA-Galang Group's Memorandum to Discuss Prejudicial Issues dated 23 September 2010, through Atty. Capulong of the Public Interest Law Center, praying that the Court disregard the compromise agreement and/or referendum and order the distribution of the land to the qualified beneficiaries;[135]

e. Respondent-intervenor FARM Group's Memorandum dated 24 September 2010, through Atty. Monsod of the Rights Network, praying for the declaration of Section 31 of the CARL as unconstitutional and the dismissal of the instant Petition;[136]

f. Public respondents PARC and DAR Memorandum dated 23 September 2010, though the Office of the Solicitor General, praying for the dismissal of the instant Petition;[137]

g. Petitioner-in-intervention LIPCO's Memorandum dated 23 September 2010, arguing that it is an innocent purchaser for value of the lands subject of compulsory coverage under the CARL and that its title cannot be collaterally attacked;[138] and

h. Petitioner-in-intervention RCBC's Memorandum dated 23 September 2010 praying for the reversal and setting aside of the questioned PARC Resolution and exclusion of their lands from the notice of compulsory coverage under the CARL.[139]

Issues

Taking cognizance of the arguments espoused by all of the parties, the Court has simplified the various factual and legal

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[134] *Rollo*, Vol. 3, at 3231-3279.

[135] *Rollo*, Vol. 3, at 4173-4217.

[136] *Rollo*, Vol. 3, at 3806-3931.

[137] *Rollo*, Vol. 3, at 3932-4024.

[138] *Rollo*, Vol. 3, at 3280-3634.

[139] *Rollo*, Vol. 3, at 4219-4473.

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controversies raised and will limit its disposition to the following matters:

I. Whether the parties, specifically private respondents Supervisory Group, AMBALA, FARM and ULWU, have a real interest in the present controversy involving the coverage of the Hacienda Luisita land;

II. Whether we may rule on the constitutional challenge against the validity of a stock distribution plan under Section 31 of the CARL;

III. Whether the PARC or the SEC has jurisdiction over the issue of validity of the SDOA and, consequently, the authority to affirm or revoke the same;

IV. Whether there is a legal and factual basis to revoke the SDOA; and

V. Whether the purchasers or transferees of the converted lands in Hacienda Luisita are qualified to be innocent purchasers for value.

Ruling

I.

Private respondents Supervisory Group AMBALA, FARM and ULWU, representing qualified farm worker beneficiaries entitled to the benefits under the SDOA, are real parties in interest in the instant case.

To qualify a person to be a real party in interest in whose name an action must be prosecuted,[140] he must appear to be the present real owner of the right sought to be enforced.[141] Interest within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest

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[140] "A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest." (Rules of Court, Rule 3, Sec. 2)

[141] *National Housing Authority v. Magat*, G.R. No. 164244, 30 July 2009, 594 SCRA 356, citing *Shipside, Inc. v. Court of Appeals*, 404 Phil. 981, 998 (2001) and *Pioneer Insurance & Surety Corporation v. Court of Appeals*, G.R. No. 84197, 28 July 1989, 175 SCRA 668.

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in the question involved, or a mere incidental interest.[142] It is distinguished from a mere expectancy or a future, contingent or subordinate.[143]

In filing the Petition/Protest with the DAR, private respondent Supervisory Group primarily sought the renegotiation of the SDOA with petitioner HLI. Private respondent claimed that its members were entitled to the rights and privileges under the SDOA but were not able to enjoy most of them.[144]

With respect to the Supervisory Group, it appears the sixty-two (62) signatories of private respondent Supervisory Group's Petition/Protest in the DAR were awarded a total of 1,073,369 shares, as detailed in the signature sheet.[145] The list submitted by petitioner HLI to the Court confirmed that private respondent Supervisory Group's spokespersons — Jose Julio Zuñiga and Windsor Andaya — were beneficiaries and recipients of shares under the SDOA from 1989-2004.[146] Public respondents' records even show that Zuñiga was one of the FWBs who originally signed the SDOA in 1989.[147] Having been recipients of the shares

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[142] *Sumalo Homeowners Association of Hermosa, Bataan v. Litton, et al.*, G.R. No. 146061, 31 August 2006, 500 SCRA 385, citing *VSC Commercial Enterprises v. Court of Appeals*, G.R. No. 121159, 16 December 2002, 394 SCRA 74, 79.

[143] *Id.*

[144] "1. That while we adhere to the law, we equally make manifestation that we do not now enjoy most of the rights and privileges that we are supposed to enjoy as provided in our Memorandum of Agreement (SDOA) with the Hacienda Luisita, Inc. as such but not limited to the 1 per cent share from the HLI which represents our shares as supervisors during the transition period; . . ." (Supervisory Group's Petition/Protest, par.1, at 1; *rollo*, Vol. 1, at 153)

[145] *Rollo*, Vol. 1, at 157-158.

[146] As indicated in the signature sheet of the Petition/Protest, the list submitted confirmed that Zuñiga and Andaya both received 15,633 and 19,565 shares from the years 1989 to 2004. After the Petition/Protest was filed in the DAR, they again received an equivalent number of shares ("accelerated shares"), and thus doubling their individual shareholdings to 31,266 shares (Zuñiga) and 39,130 shares (Andaya). (Annex "A" of petitioner HLI's Compliance dated 07 July 2009; *rollo*, Vol. 2, at 1913 and 1932).

[147] DAR Certification dated 24 August 2009; *rollo*, Vol. 2, at 2329.

of stock and other benefits under the SDOA, private respondent Supervisory Group and its members clearly have a real interest in the validity and/or implementation of the SDOA. As real parties in interest under the Rules, they have standing to raise questions regarding the same and pursue an action with the proper authority.

With respect to AMBALA (both the Mallari and Galang Group), private respondent AMBALA filed the "*Petisyon*" in the DAR as qualified FWBs entitled to receive benefits under the SDOA. Rene Galang and Noel Mallari (President and Vice-President of private respondent AMBALA) represented themselves as leaders of qualified FWBs. They demanded from petitioner HLI, among others, the payment of their shares from the sale of converted lands and alternatively, the distribution of the Hacienda Luisita lands under compulsory acquisition in the CARL. Similar to Mr. Zuñiga of private respondent Supervisory Group, Mr. Mallari's standing to question the SDOA arises from his status as one of the original signatories thereto.[148] Clearly, their substantial and material interest derives from the fact that they were entitled to benefits under the SDOA, which they had previously agreed to and signed.

The representatives of private respondent AMBALA were also recipients of shares of stock under the SDOA.[149] Even if Galang, as head of private respondent AMBALA, allegedly started his employment with the company only in June 1990 after the SDOA was signed,[150] he still possesses a real interest in the agreement because he was identified as one of the beneficiaries of the stock distribution option. Therefore, any ruling on the SDOA with respect to its validity or implementation will invariably affect their rights and that of other members of private respondent AMBALA, who have claims under the said agreement.

In any case, petitioner HLI has expressly acknowledged that private respondents AMBALA and Supervisory Group are real

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[148] DAR Certification dated 24 August 2009; *rollo*, Vol. 2, at 2413.

[149] Annex "A" of petitioner HLI's Compliance dated 07 July 2009; *rollo*, Vol. 2, at 1920, 2032, 2105.

[150] Petitioner HLI's Consolidated Reply dated 29 May 2007, para 2.2.1 (a), at 14; *rollo*, Vol. 1, at 869.

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parties-in-interest with respect to filing the petition before the DAR.[151] Petitioner HLI's acknowledgement of private respondents' interest in the case may have been precipitated by their proposed compromise agreement submitted for approval to the Court.[152] Regardless of the Court's resolution of the proposed compromise agreement, petitioner HLI's admission foreclosed the issue as to private respondents' interest and/or rights as qualified FWBs in the present action to question the SDOA.

The members of the AMBALA Galang Group, which opposed the compromise agreement with petitioner HLI, likewise claim rights under the SDOA as FWBs and, hence, also possess a real interest in this case. It will be recalled that the group is represented by Rene Galang, who was the President of AMBALA at the time the complaint before the PARC proceedings was filed.[153] Thereafter, the private respondent AMBALA split into two factions (Mallari Group and Galang Group), presumably arising from their disagreement with respect to the proposed compromise agreement and the change of counsel. The AMBALA Mallari Group, which was represented by Atty. Santoyo, favored the approval of the compromise agreement, while the AMBALA Galang Group, insisted on land distribution and retained its previous counsel, Atty. Pahilga of SENTRA.[154] In any event,

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[151] "The **petitioners before the DAR/PARC are real parties-in-interest**, namely private respondents RENE GALANG and NOEL MALLARI who signed the '*petisyon*' of the Alyansa ng mga Manggawang Bukid ng Hacienda Luisita (AMBALA) filed with the Department of Agrarian Reform (DAR) and the sixty-two (62) farmworkers who signed the 'petition/protest' filed with the DAR on October 14, 2003, led by private respondents JOSE JULIO SUNIGA and WINDSOR ANDAYA"; (Petitioner HLI's Memorandum dated 23 September 2010, par. 6.1, at 73; *rollo*, Vol. 3, at 3715)

[152] Joint Submission and Motion for Approval of Attached Compromise Agreement dated 10 August 2010; *rollo*, Vol. 3, at 2898-2913.

[153] "Petisyon (Para sa Pagpapawalang Bisa sa Stock Distribution Option [SDO], Pagpapatigil sa Pagpapalit Gamit ng Lupa at Pamamahagi ng Lupaing Napapaloob sa Hacienda Luisita, Inc.)"; *rollo*, Vol. 1, at 369-375.

[154] Rene Galang was represented in his individual capacity by Atty. Capulong of the Public Interest Law Center. But Atty. Capulong was also the collaborating counsel representing the AMBALA Galang Group. (Entry of Appearance dated14 September 2010; *rollo*, Vol. 3, at 3158)

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Rene Galang, similar to Noel Mallari, also received shares of stocks from petitioner HLI under the SDOA,[155] and thus, has a real interest in the outcome of the case.

On the other hand, FARM was the break-away group from AMBALA, which was headed by Noel Mallari when it first entered its appearance in the Court's proceedings.[156] When Mallari returned to AMBALA, the officers and members of the FARM continued to intervene in the proceedings headed by Renato Lalic, and were represented by Atty. Monsod of the Rights Network. Members of the FARM all claim to have been long-term occupants, residents of and workers at the Hacienda Luisita lands, and that they also own shares of petitioner HLI and homelots arising from the SDOA.[157] As beneficiaries under the SDOA, members of FARM are also real parties in interest since they will be directly affected by the validity or invalidity of the SDOA.

Finally, ULWU first intervened in the proceeding at the PARC level, when it joined the Supervisory Group and AMBALA in opposing petitioner HLI's motion for reconsideration of the questioned PARC resolution.[158] However, ULWU, together with the other two groups joined petitioner HLI in seeking the Court's approval of the proposed compromise agreement. There is no denying that ULWU also has standing in the instant case, since it not only received benefits under the SDOA, but also dealt with petitioner HLI in entering into a compromise agreement.

Ultimately, qualified FWBs who originally consented to the SDOA or those who are entitled to and/or received benefits

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[155] Rene Galang received 47,216 shares from petitioner HLI. (*Rollo*, Vol. 2, at 1920)

[156] *Rollo*, Vol. 1, at 436-519.

[157] FARM's Memorandum dated 24 September 2010, at 111-112; *rollo*, Vol. 3, at 3915-3916.

[158] Opposition to Motion for Reconsideration and Motion for Immediate and Expeditious Execution of PARC Resolution dated 16 January 2006, filed by Atty. Jobert Pahilga of SENTRA and Atty. Romeo Capulong of the Public Interest Law Center. (*Rollo*, Vol. 1, at 771-781)

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under the said agreement have a substantial interest in the adjudication of the status and legitimacy of the SDOA.

Petitioners-in-Intervention RCBC and LIPCO are Real Parties in Interest.

Petitioners-in-intervention RCBC and LIPCO have a legal and substantial interest as the present owners of the converted lands subject of compulsory coverage under the questioned PARC Resolution.[159] The rights of petitioners-in-intervention over the converted lands, which were transferred to them by petitioner HLI and Centennary Holdings, will be affected by the revocation of the SDOA and the subsequent inclusion of the transferred properties in compulsory acquisition. Their interest stems from being owners of land that was included in the notice of compulsory coverage. Their rights over portions of the Hacienda Luisita lands, previously owned by petitioner HLI and converted into industrial lands by the DAR, will be directly affected if the DAR is permitted to expropriate the same for distribution to qualified FWBs under the CARL. Hence, they have a substantial and material interest in the outcome of the questioned PARC Resolution insofar as it may possibly deprive them of their rights over the lands they purchased.

II.

The constitutional validity of the stock distribution option under the CARL was not timely raised and is not the *lis mota* in this case.

Respondent-intervenor FARM questioned the validity of the stock distribution option of a corporate landowner under Section 31 of the CARL on the ground that it is in violation of the constitutional provision on agrarian reform, specifically the distribution of land to the farmers.[160] Respondent-intervenor

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[159] The Court had earlier granted the petition-in-intervention of RCBC and noted the petition-in-intervention of LIPCO. (Resolution dated 10 December 2007)

[160] Respondent-intervenor FARM's Memorandum dated 24 September 2010, at 14-45; *rollo*, Vol. 3, at 3819-3850.

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argued that the stock distribution option was not one of the modes intended by the agrarian reform policy in giving "land to the landless." In response, petitioner HLI countered that the issue of the CARL's constitutionality cannot be collaterally attacked.[161]

Before the Court can exercise its power to pass upon the issue of constitutionality, the following requisites must be present:

1. There must be an actual case or controversy calling for the exercise of judicial power;

2. The person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

3. The question of constitutionality must be raised at the earliest opportunity; and

4. The issue of constitutionality must be the very *lis mota* of the case.[162]

Although the first two requisites are present, FARM has not shown compliance with the remaining two requisites.

With respect to the timeliness of the issue, respondent-intervenor FARM did not raise the constitutional question at the earliest possible time. The petitions filed in the PARC, which precipitated the present case, did not contain any constitutional challenge against the stock distribution option under the CARL. As previous members of private respondent AMBALA, nothing prevented respondent-intervenor FARM from arguing on the purported constitutional infirmity of a stock distribution option as opposed to a direct land transfer, in the AMBALA Petition in the PARC proceedings below.

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[161] Petitioner HLI's Memorandum dated 23 September 2010, at 76-80; *rollo*, Vol. 3, at 3718-3722.

[162] *Biraogo v. Philippine Truth Commission*, G.R. Nos. 192935 & 193036, 07 December 2010, citing *Senate of the Philippines v. Ermita*, G.R. No. 169777, 20 April 2006, 488 SCRA 1, 35, and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

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Respondent-intervenor FARM would argue that it raised the constitutionality issue in its position paper at the level of the PARC.[163] However, this is a late attempt on its part to remedy the situation and comply with the foregoing requisite on timeliness in the exercise of judicial review. Nothing in the initiatory petitions of private respondents Supervisory Group and AMBALA assailed the inherent invalidity of stock distribution options as provided in Section 31 of the CARL.

Respondent-intervenor FARM posits that it fully complied with the requirement of timeliness under the doctrine of judicial review since the earliest possible opportunity to raise the issue must be with a **court** with the competence to resolve the constitutional question, citing as basis *Serrano v. Gallant Maritime Services, Inc.*[164] This case is significantly different from *Serrano* as to render the latter's legal conclusions inapplicable to the present situation.

In *Serrano*, the question of the validity of the money claims clause of the Migrant Workers and Overseas Filipinos Act of 1995[165] was timely raised at the very first instance in a competent court, namely in Antonio Serrano's petition for *certiorari* filed with the Court of Appeals.[166] In sharp contrast, the question of the constitutionality of the CARL in this case was belatedly

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[163] "As regards the third requisite of timeliness of raising the constitutionality issue, Respondents-Intervenors have already raised the constitutional issue in their position paper at the level of the Presidential Reform Council (PARC)." (Respondent-intervenor FARM's Memorandum dated 24 September 2010, at 42; *rollo*, Vol. 3, at 3847)

[164] G.R. No. 167614, 24 March 2009, 582 SCRA 254.

[165] "Sec. 10. *Money Claims*. — … In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less." (Republic Act No. 8042, Sec. 10)

[166] "Petitioner (Serrano) filed a Motion for Partial Reconsideration (with the NLRC), but this time he **questioned the constitutionality of the subject clause**. The NLRC denied the motion."

included in respondent-intervenor FARM's supplemental comment[167] after an earlier manifestation and motion had already been filed. Thus, respondent-intervenor's earliest opportunity to raise the constitutionality of Section 31 of the CARL was in the very first pleading it filed in this Court, and not in a supplemental comment.

Even assuming *arguendo* that the rule requiring the timeliness of the constitutional question can be relaxed, the Court must refrain from making a final determination on the constitutional validity of a stock distribution option at this time because it is not the *lis mota* of the present controversy and the case can be disposed of on some other ground.

The Court will not touch the issue of constitutionality unless it is truly unavoidable and is the very *lis mota* or *crux* of the controversy.[168] In the seminal case of *Garcia v. Executive Secretary*, the Court explained the concept of *lis mota* as a requirement of judicial review in this wise:

Lis mota — the fourth requirement to satisfy before this Court will undertake judicial review — means that the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined. This requirement is

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"Petitioner filed a Petition for *Certiorari* with the CA, **reiterating the constitutional challenge against the subject clause**. After initially dismissing the petition on a technicality, the CA eventually gave due course to it, as directed by this Court in its Resolution dated August 7, 2003 which granted the petition for *certiorari*, docketed as G.R. No. 151833, filed by petitioner." (*Serrano v. Gallant Maritime Services, supra* note 164)

[167] "Section 31 of the Comprehensive Agrarian Reform Law is unconstitutional in so far as it fails to effect agrarian land reform that covers a redistribution of both wealth and power." (Supplemental Comment, through collaborating counsel Mary Ann dela Peña of the PEACE Foundation, Inc.; *rollo*, Vol. 1, at 822-837).

[168] *Francisco v. House of Representatives*, G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, and 160360, 10 November 2003, 415 SCRA 44.

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based on the rule that every law has in its favor the presumption of constitutionality; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative.[169]

A court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid unless such question is raised by the parties; when raised, if the record presents some other ground upon which the court may rest its judgment, the latter course will be adopted and the constitutional question will be left for consideration until a case arises wherein a decision upon such question will be unavoidable.[170] The Court will not shirk its duty of wielding the power of judicial review in the face of gross and blatant acts committed by other branches of government in direct violation of the Constitution; but neither will it be overly eager to brandish it when there are other available grounds that would avoid a constitutional clash.

It will be recalled that what the qualified beneficiaries assailed in the PARC proceedings was the failure on the part of petitioner HLI to fulfill its obligations under the SDOA, and what they prayed for was for the lands to be the subject of direct land transfer. The question of constitutionality of a stock distribution option can be avoided simply by limiting the present inquiry on the provisions of the SDOA and its implementation. Whether the PARC committed grave abuse of discretion in recalling or revoking the approval of the SDOA need not involve a declaration of unconstitutionality of the provisions of the CARL on stock distribution.

There is no "paramount public interest" that compels this Court to rule on the question of constitutionality. As a legislative act, the CARL enjoys the presumption of constitutionality.[171]

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[169] *Garcia v. Executive Secretary*, G.R. No. 157584, 02 April 2009, 583 SCRA 119.

[170] *Sotto v. Commission on Elections*, 76 Phil. 516 (1946).

[171] "Any law duly enacted by Congress carries with it the presumption of constitutionality. Before a law may be declared unconstitutional by this

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Absent any glaring constitutional violation or evident proof thereof, the Court must uphold the CARL. Indeed, paramount public interest is better served by precluding a finding on the CARL at this point, since such finding could unfairly impact other corporate landowners and farmer beneficiaries under a stock distribution option in other parts of the country[172] who are not parties to the instant case.

While we do not rule on the constitutionality of stock distribution option, we also need to state that there appears to be no clear and unequivocal prohibition under the Constitution that expressly disallows stock distribution option under the provisions on agrarian reform:

> The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless**, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof**. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.[173]

The primary constitutional principle is to allow the tiller to exercise rights of ownership over the lands, but it does not confine this right to absolute direct ownership. Farmworkers are even

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Court, there must be a clear showing that a specific provision of the fundamental law has been violated or transgressed. When there is neither a violation of a specific provision of the Constitution nor any proof showing that there is such a violation, the presumption of constitutionality will prevail and the law must be upheld. To doubt is to sustain." (*Aquino v. COMELEC*, G.R. No. 189793, 07 April 2010, 617 SCRA 623)

[172] As of 26 January 2006, there were thirteen (13) corporate landowners with approved stock distribution option plans for monitoring by the DAR covering 7,703 hectares of private agricultural lands. (DAR Administrative Order No. 01-2006)

[173] CONSTITUTION, Art. XIII, Sec. 4.

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allowed to simply have a share in the fruits of the land they till for as long as what they receive is just and fair. The framers of the Constitution established the right of landless farmers and regular farmworkers to own the lands they till directly or collectively, but left the identification of the means of ownership to Congress. This was an important decision, considering that Congress has the better facilities and faculties to adjudge the most appropriate and beneficial methods for the exercise of the constitutional right in cases where dividing a small landholding among a multitude of qualified FWBs would result in parceling out patches of land not viable for individual farming. Whether stock distribution is a valid method identified by Congress for lands owned by a corporation, or whether it is a "loophole" in the CARL to evade land distribution in contravention of the intent of the Constitution, is a question that need not be answered now.

III.

The PARC has jurisdiction over the question of the validity of and/or compliance with the SDOA.

Petitioner HLI assails the jurisdiction of the PARC to recall the SDOA. It argues that the PARC's authority is limited to approval or disapproval of a stock distribution proposal made by a corporate landowner and qualified FWBs; purportedly, this does not include a revocation of the agreement, especially after it has already been implemented. It theorizes that the agreement, once approved by the PARC, "ascends" to the level of an **ordinary civil contract** and thus any action to annul the same must be through the regular courts and not the PARC.[174]

The PARC was created primarily to coordinate the implementation of the comprehensive agrarian reform program (CARP) and to ensure the timely and effective delivery of the

[174] "However, when the corporate landowner and the farmworkers have entered into an [sic] Stock Distribution Agreement (SDOA) as in this case, which the PARC approved, the SDOA has ascended to the level of a civil contract where the parties are governed by the law on contracts under civil law." (Petitioner HLI's Memorandum, par. 4.7.1, at 43; *rollo*, Vol. 3, at 3685)

necessary support services.[175] It was tasked to "formulate and/or **implement** the policies, rules and regulations necessary to implement each component of the CARP, and may authorize any of its members to formulate rules and regulations concerning aspects of agrarian reform falling within their area of responsibility."[176]

With respect to the stock distribution option under the CARL, one of the PARC's powers is to approve a stock distribution plan of corporate land owners.[177] After the DAR Secretary evaluates the stock distribution plan, he shall forward it together with the supporting documents and his recommendations to the PARC, which shall decide whether or not to approve the same.[178]

Petitioner's argument is not persuasive, since it espouses a deprivation of the PARC's authority to effectively implement the policies, rules and regulations of the CARL.

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[175] Executive Order No. 229, Sec. 1.

[176] The policies, rules and regulations for formulation by the PARC included following: (a) Recommended small farm economy areas, which shall be specific by crop and based on thorough technical study and evaluation; (b) The schedule of acquisition and redistribution of specific agrarian reform areas, provided that such acquisition shall not be implemented until all the requirements are completed, including the first payment to the landowners concerned; and (c) Control mechanisms for evaluating the owner's declaration of current fair market value in order to establish the government's compensation offer, taking into account current land transactions in the locality, the landowner's annual income from his land, and other factors. (Executive Order No. 229, Sec. 1)

[177] "If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution **approved by the PARC** within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act." (CARL, Sec. 31, last paragraph)

[178] "After the evaluation of the stock distribution plan submitted by the corporate land-owner applicant to the Secretary of Agrarian Reform, he shall forward the same with all the supporting documents to the Presidential Agrarian Reform Council (PARC), through its Executive Committee, with his recommendation for final action." (Guidelines and Procedures for Corporate Landowners Desiring to Avail Themselves of the Stock Distribution Option under Sec. 31 of R.A. 6657, DAR Administrative Order No. 10-88, Sec. 10)

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Under the CARL, the stock distribution option would ordinarily necessitate an outright delivery of the shares to qualified FWBs. This method of distributing shares would be effected within a short period, in much the same speed as that of lands transferred under the first option. In a stock distribution scheme, government approval is necessary in two instances:

1. Approving the proposal for stock distribution option plan or agreement arrived at between the corporate landowner and qualified FWBs (approval of the agreement); and

2. Approving compliance by all the concerned parties of the terms and conditions of the plan or agreement (approval of the compliance).

The first involves a conceptual and theoretical authorization that the terms of the stock distribution are in accordance with the law and agrarian reform policy. The failure to obtain **approval of the agreement** does not preclude the parties from renegotiating the agreement and submitting it again for approval, especially if the PARC raises concerns regarding some of the terms.

The second instance determines whether the parties faithfully implemented and complied with their obligations under the approved agreement. Hence, the failure to obtain **approval of the compliance** demonstrates a defect in the fulfillment of the parties of their responsibilities. This situation occurs if, for example, after a few months from the approval of the agreement, not a single share has been received by any of the qualified FWBs or recorded in the books of the corporate landowner. In fact, the law expressly provides that should the stock transfer not materialize, then the agricultural land of the corporate owners or corporation shall be subject to compulsory coverage.[179]

Petitioner HLI does not question the authority of the PARC with respect to the **approval of the agreement**,[180] but it raises

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[179] CARL, Sec. 31, last paragraph.

[180] "There is no question that the PARC has jurisdiction to approve or disapprove the application of corporate landowners to avail of stock distribution under Sec. 31 as an alternative arrangement under Sec. 3 of RA 6657 to land

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an issue as to whether the **approval of the compliance** remains within the authority of the PARC. Although the CARL is silent on the latter authority, it is more logical and efficient for this necessary power to remain lodged with the PARC.

Jurisdiction over a subject matter is conferred by law.[181] Section 50 of the CARL and Section 17 of Executive Order No. 229 vests in the DAR the primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all matters involving **the implementation of agrarian reform**.[182] The DAR's primary and exclusive jurisdiction includes authority over agrarian disputes, which also covers "disputes on the **terms and conditions of the transfer of ownership** from landowners to agrarian reform beneficiaries."[183] Congress provides the exclusive jurisdiction of the DAR in agrarian disputes, in this language:

SECTION 50-A. Exclusive Jurisdiction on Agrarian Dispute. — No court or prosecutor's office shall take cognizance of cases pertaining to the implementation of the CARP except those provided under Section 57 of Republic Act No. 6657, as amended. If there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant, **the case shall be automatically referred by the judge or the prosecutor to the DAR which shall determine and certify within fifteen (15) days from referral whether an agrarian dispute exists**: Provided, That from the determination of the DAR, an aggrieved party shall have judicial recourse. In cases referred by the municipal trial court and the prosecutor's office, the appeal shall be with the

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redistribution." (Petitioner HLI's Memorandum, par. 4.7.1, at 43; *rollo*, Vol. 3, at 3685)

[181] *Lakeview Golf and Country Club, Inc., v. Luzvimin Samahang Nayon*, G.R. No. 171253, 16 April 2009, 585 SCRA 368.

[182] *Lakeview Golf and Country Club, Inc., v. Luzvimin Samahang Nayon, id.*

[183] "[Agrarian dispute] includes any controversy relating to compensation of lands acquired under this Act and **other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries**, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee." (CARL, Sec. 3-d)

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proper regional trial court, and in cases referred by the regional trial court, the appeal shall be to the Court of Appeals. …"[184] (Emphasis supplied)

Since a stock distribution option is an alternative method of transferring ownership of agricultural land to FWBs, any controversy regarding compliance with the approved terms and conditions of such transfer is necessarily an agrarian dispute that is within the primary and exclusive jurisdiction of the DAR, and necessarily the PARC. The function of requiring approval of the compliance of the SDOA is precisely to ensure compliance with the earlier approval. The CARL could not have tolerated a situation where qualified FWBs would be without any recourse against a landowner who failed to live up to its promises under a stock distribution agreement.

General jurisdiction over agrarian disputes over stock distribution agreements necessarily implies a specific authority to monitor and enforce implementation of the same. As distinguished from express powers, implied powers are those that can be inferred or are implicit in the wordings or conferred by necessary or fair implication of the enabling act.[185] Public respondents correctly identified the explanation of *Chavez v. National Housing Authority*,[186] on the doctrine of necessary implication in administrative law, in this wise:

> Basic in administrative law is the doctrine that a government agency or office has express and implied powers based on its charter and other pertinent statutes. Express powers are those powers granted, allocated, and delegated to a government agency or office by express provisions of law. **On the other hand, implied powers are those that can be inferred or are implicit in the wordings of the law or conferred by necessary or fair implication in the enabling act**. In *Angara v. Electoral Commission*, the Court clarified and

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[184] Republic Act No. 9700, Sec. 19.

[185] *Soriano v. Laguardia*, G. R. Nos. 164785 and 165636, 29 April 2009, 587 SCRA 79.

[186] G.R. No. 164527, 15 August 2007, 530 SCRA 235, citing *Angara v. Electoral Commission*, 63 Phil. 139, 177 (1936).

stressed that when a general grant of power is conferred or duty enjoined, **every particular power necessary for the exercise of the one or the performance of the other is also conferred by necessary implication**. It was also explicated that when the statute does not specify the particular method to be followed or used by a government agency in the exercise of the power vested in it by law, said agency has the authority to adopt any reasonable method to carry out its functions. (Emphasis supplied)

It must be clarified that the power to revoke or recall approval of the agreement resides only in the PARC, and does not extend to the DAR. The DAR itself recognized the primacy of the PARC's evaluation and assessment of a stock distribution plan.[187] The continuing authority of the PARC to monitor and ensure proper implementation of a stock distribution option is consistent with its power to order the forfeiture of agricultural lands in case of the landowner's failure to distribute the stocks. The CARL expressly provides for the compulsory coverage of the agricultural lands if there is no distribution of the stocks to qualified FWBs.[188] In fact, the PARC is duty bound to subject the agricultural lands of the landowner to compulsory coverage if stock distribution does not materialize.

In the instant case, the complaints of the qualified FWBs were properly lodged with the PARC, which had earlier given its approval of the agreement but has yet to render approval of the compliance. It must be noted that the SDOA under question is extraordinary since it provided a longer period of thirty years for the distribution of the shares to the qualified FWBs. Rather than immediately awarding the entire lot of shares of stock, petitioner HLI opted to spread out and prolong the distribution. The PARC was not in a position to immediately render approval of the compliance since petitioner HLI still had three decades before it could implement a complete stock distribution in favor of the qualified FWBs.

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[187] "Reservation Clause — Nothing herein shall be construed as precluding the PARC from making its own independent evaluation and assessment of the stock distribution plan of the corporate landowner-applicant and in prescribing other requirements." (DAR Administrative Order No. 10-88, Sec. 12)

[188] CARL, Sec. 31, last par.

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Disputes Over the SDOA Are Inherently Agrarian in Nature.

Although petitioner HLI will not deny qualified FWBs a remedy against any claim of non-fulfillment of obligations under the SDOA, it asserts that such remedy is of a class of suits that is not within the ambit of the CARL, but instead falls under the laws on civil contracts[189] or even the Corporation Code.[190] Petitioner HLI is not correct.

The nature of the dispute of the petitions filed in the PARC is inherently agrarian in nature and not simply contractual or corporate.[191] Undeniably, the parties were compelled to agree on an acceptable mode of transfer of land ownership by the pronouncements of the CARL. This was, however, not an ordinary civil contract entered into between two parties standing on equal footing, as in fact land distribution was constitutionally sanctioned to balance the prevailing inequity between rich land owners and poor farmers.

The determination of whether the dispute under a stock distribution option is agrarian, civil or corporate in nature relies on the allegations of the complaint, the purported relationship between the contending parties and the rights sought to be enforced.[192] In this case, petitioner HLI and the farm workers share multiple relationships that can be the source of rights and

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[189] Petitioner HLI's Memorandum, at 31-46; *rollo*, Vol. 3, at 3673-3688.

[190] *Id.*, at 75; *rollo*, Vol. 3, at 3717.

[191] Agrarian dispute includes any controversy relating to compensation of lands acquired and **other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries**, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee. (CARL, Sec. 3 [d])

[192] "The basic rule is that jurisdiction over the subject matter is determined by the allegations in the complaint. Jurisdiction is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant." (*Arzaga v. Copias*, G.R. No. 152404, 28 March 2003, 400 SCRA 148)

obligations between them. Primarily, petitioner HLI's relationship with the farm workers is that of a corporate landowner and qualified beneficiary under the CARL. But they also share an employer-employee relationship, insofar as the farm workers receive salaries and benefits from the corporation. There is likewise a tri-partite civil and contractual relationship arising from the SDOA between petitioner HLI (the spin-off corporation), TADECO (the original corporate landowner), and the qualified FWBs. Finally, the farm workers are also stockholders of petitioner HLI, having been awarded shares under the SDOA. Indeed, these various relationships give rise to distinct rights and prescribe separate remedies under the law.

However, the overriding consideration for the stock distribution agreement under the CARL is the relationship of landowner-farm worker, which was the legal basis for the parties to have entered into the SDOA in the first place. Petitioner HLI and TADECO signed the SDOA precisely because the farm workers who agreed thereto were identified as qualified FWBs entitled to the benefits under the CARL. Similarly, the farm workers' acquisition of the additional status of stockholders of petitioner HLI arose out of their original status as qualified FWBs. Hence, all disputes arising from the stock distribution must be viewed in light of this principal juridical tie of corporate landowner and qualified FWBs. Parties cannot invoke other incidental relationships (civil or corporate) to deprive the PARC of its primary and exclusive jurisdiction over complaints filed by qualified FWBs against a stock distribution agreement, which is invariably an agrarian dispute.

Granting the PARC jurisdiction over disputes involving stock distribution agreements does not diminish the jurisdiction of regular or commercial courts or the SEC; it is merely a recognition of its special competence over the matter of implementation of the CARL, especially when it comes to stock distribution agreements with FWBs. It is absurd to deprive the PARC of jurisdiction simply because civil or corporate causes of action are included and in this case, belatedly, by petitioner HLI.

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Considering the several capacities involved under a stock distribution option between a corporate landowner and qualified FWBs, the better rule now is that **all disputes arising from their stock distribution agreement and/or its implementation shall be within the jurisdiction of the PARC** in accordance with its primary and exclusive jurisdiction under the CARL over agrarian disputes.[193]

IV.

There is legal and factual basis to recall/revoke the approval of the SDOA and order the compulsory coverage of the agricultural lands of Hacienda Luisita.

Proceeding to the substantial merits of the case, questioned PARC resolution should be affirmed insofar as it found factual and legal basis to revoke/recall approval of the SDOA between petitioner HLI and the qualified FWBs.

Violating the Integrity of the Pool of the qualified FWBs; Variability in their Number of Shares

The SDOA grossly violated the provisions of the CARL with respect to the stock distribution option when its basis for distributing the shares was made on the ground of its continuing determination of the man-hours served by the qualified FWBs. The rolling policy of petitioner HLI is contrary to the intent of stock distribution option under the CARL.

The CARL provides that a corporate land owner may give its qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land actually devoted to agricultural activities bears in relation to the company's total assets.[194] In qualifying the ratio of shares to be received by each of the qualified FWBs, the DAR explained that, as a minimum, each of the qualified FWBs would receive an equal number of shares of stock of the same class and value,

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[193] As amended by Republic Act No. 9700, Sec. 19.

[194] CARL, Sec. 31.

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with the same rights and features as all other shares.[195] Although the DAR allowed shares of stock to be distributed based on other factors, such as rank, seniority, salary or position, this distribution is in addition to the minimum ratio earlier described, which guarantees a base number of shares for all types of qualified FWBs.[196] Hence, the minimum ratio under a stock distribution scheme is a **fixed value** that should be equally received by all qualified FWBs; meanwhile, the additional shares are **variable** depending on an agreed upon criteria.

The SDOA also provided for a moving distribution of shares of stock based on the "number of days" worked by qualified FWBs, which is undeniably a variable criterion, in violation of the fixed minimum ratio.[197]

There is no error in identifying the qualified FWBs based on the payroll of petitioner HLI as of a fixed point in time. Under

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[195] "The stock distribution plan submitted by the corporate landowner-applicant shall provide for the distribution of an **equal number of shares of stock of the same class and value, with the same rights and features as all other shares**, to each of the qualified beneficiaries. This distribution plan in all cases shall be at least the **minimum ratio** for purposes of compliance with Section 31 of RA 6657. …" (DAR Administrative Order No. 10-88, Sec. 4, 1st par.)

[196] "… On top of the minimum ratio provided under Section 3 of this Implementing Guideline, corporate landowner-applicant may adopt additional stock distribution schemes taking into account factors such as rank, seniority, salary, position and other circumstances which may be deemed desirable as a matter of sound company policy." (DAR Administrative Order No. 10-88, Sec. 4, 1st par.)

[197] "2. The qualified beneficiaries of the stock distribution plan shall be the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by the SECOND PARTY (Petitioner HLI)."

"3. At the **end of each fiscal year**, for a period of 30 years, the SECOND PARTY shall arrange with the FIRST PARTY (TADECO) the acquisition and distribution to the THIRD PARTY (qualified FWBs) **on the basis of number of days worked** and at no cost to them of one-thirtieth (1/30) of 118,391,3976.85 shares of stock of the capital stock of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,3976.85 shares shall have been completely acquired and distributed to the THIRD PARTY." (SDOA at p. 3 [*rollo*, Vol. 1, at 149]; emphasis supplied)

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the fixed minimum ratio in a stock distribution scheme, persons would be identified as qualified beneficiaries[198] based on whether they appear on the corporate landowner's payroll as farmworkers,[199] regardless of whether they are regular or seasonal or whether they receive compensation in a daily, weekly, monthly or "*pakyaw*" basis. In this case, there were 6,296 farmworkers as of 11 May 1989, who were qualified as beneficiaries at the time of the signing of the SDOA. Thus, each of these farmworkers should have received an equal number of the total shares distributed by petitioner HLI.[200]

However, contrary to above-mentioned fixed minimum ratio, petitioner HLI adopted a wholly variable and mobile criterion — the number of shares would be based on the number of man-days each qualified FWB logged in every year.[201] Instead of receiving an equal amount, farmworkers under the SDOA would receive varying number of shares depending on the man-days rendered.[202]

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[198] "The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority: (a) agricultural lessees and share tenants; (b) **regular farmworkers**; (c) **seasonal farmworkers**; (d) **other farmworkers**; (e) actual tillers or occupants of public lands; (f) collectives or cooperatives of the above beneficiaries; and (g) others directly working on the land. . . ." (CARL, Sec. 22)

[199] "Farmworker is a natural person who **renders services for value as an employee or laborer in an agricultural enterprise or farm** regardless of whether his compensation is paid on a daily, weekly, monthly or '*pakyaw*' basis." (CARL, Sec. 3 [g])

[200] Assuming *arguendo* that there were 118,391,976.85 shares to be distributed to the 6,296 farmworkers who signed the SDOA, then each of them should have been entitled to a minimum ratio of **18,804.32 shares** in petitioner HLI.

[201] "Considering that the list of qualified worker-beneficiaries is a **mobile one that changes from time to time and will depend on the number of days that they have worked during the year**, there is no fixed number of shares due each qualified worker-beneficiary to speak of and the much-feared dilution of his shares cannot, therefore, possibly take place." (Letter dated 14 November 1989, at 2; *rollo*, Vol. 1, at 1311; emphasis supplied)

[202] "JUSTICE VELASCO: … Your stock distribution option agreement is unique in the sense that **these workers or farmer beneficiaries will get the**

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Thus, if some of the 6,296 farmworkers served more man-days than the others, then they would be entitled to more shares. The scheme is in clear violation of the policy of equal number of shares as a minimum ratio for all qualified FWBs.

Worse, the qualified FWBs' entitlement to receipt of shares was made on a rolling basis at the end of each year for the next thirty years. The number of shares was not only variable depending on the number of man-days served, but also on the time period when these man-days were served. Under the SDOA, there would be a yearly and partial distribution of shares to the qualified FWBs based on the annual number of man-days performed. Hence, qualified FWBs who worked in a previous year, but failed to get the same number of man-days or failed to work at all in the succeeding year, would not receive an equivalent number of shares at the end of the year. Moreover, persons who were not part of the original 6,296 farmworkers, but were subsequently employed by petitioner HLI, would still be entitled to annual proportionate shares of stock under the SDOA.[203] Thus, the original FWBs were deprived of their guaranteed equal shareholdings by the proportional allocation of stocks to farmworkers who were not even employed at the time of the signing of the SDOA.[204] The variable determination of the number

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stocks only when they work for the company. Meaning to say, it will be dependent on the work to be performed by these workers or farmer beneficiaries?

ATTY. ASUNCION: That is correct Your Honor they call it man days." (TSN dated 18 August 2010, at 38-38)

[203] "4. As more new workers are hired, throughout the suspended period of 30 years, the lesser be the entitlement of the original farmer beneficiaries considering the policy of HLI under its SDP that the share is determined by the actual day's work, proportionately computed." (PARC Council Resolution No. 2006-34-01 dated 03 May 2006, at 16; *rollo*, Vol. 1, at 422)

[204] Assuming that as claimed by petitioner HLI that 118,391,976 shares of stock have all been completed distributed to the 10,502 stockholders of record (Petitioner HLI's Letter dated 09 June 2005 [*rollo*, Vol. 2, at 2208]; Certification dated 05 August 2010 [*rollo*, Vol. 3, at 2612]) and assuming further that each of them received an equal number of shares, then each of them would have received 11,273.28 shares, which is **59.95%** of **18,804.32 shares** that were supposed to be received by the original 6,296 farmworkers.

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of shares to which qualified FWBs were entitled resulted in the **dilution** of their shares, since the number of recipients "ballooned" through time (10,502 FWBs) but the number of stocks to be distributed remained the same.

In fact, the policy of "no-work-no-share-of-stock"[205] becomes patently burdensome in its operation, since it was found that petitioner HLI had control of the number of man-days to be given to the qualified FWBs, which in turn determined the number of shares they were to receive under the SDOA. In its Terminal Report, the DAR Special Team found that:

"FGD/OCI finding that the number of shares of stock to be received by the FWBs, depends on their designation (*i.e.*, permanent, casual or seasonal) and on the number of man days. Retired and retrenched workers are not given shares of stocks and cease as share holders. **Indisputedly (sic), the setup under the MOA is one-sided in favor of HLI. The work schedule, upon which the extent of entitlement to be granted shares of stock is wholly within the prerogative and discretion of HLI management that a FWB can still be denied thereof by the simple expediency of not giving him any working hours/days**. And this is made possible by the fact that [there] are more farmers/farmworkers in its employ than what is, according to HLI, necessary to make it operational."[206]

"2. The matter of issuance/distribution [of] shares of stocks in lieu of actual distribution of the agricultural land involved, was made **totally dependent on the discretion/caprice of HLI**. Under the setup, the agreement is **grossly onerous to the FWBs** as their man days of work cannot depart from whatever management of HLI unilaterally directs."[207]

"**They can be denied the opportunity to be granted a share of stock by just not allowing them to work altogether under the guise of rotation**. Meanwhile, within the 30-year period of bondage, they may already reach retirement, or, worse, get retrenched for any reason, then, they forever lose whatever benefit he (sic) could

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[205] Petitioner HLI's Memorandum, par. 5.2 (a), at 51; *rollo*, Vol. 3, at 3693.

[206] Terminal Report dated 22 September 2005, at 12; *rollo*, Vol. 1, at 397.

[207] Terminal Report dated 22 September 2005, at 18; *rollo*, Vol. 1, at 403.

have received as regular agrarian beneficiary under the CARP if only the SDP of HLI were not authorized and approved."[208] (Emphasis supplied)

Petitioner HLI retained control as to who would be granted the opportunity to become farmworkers in any given year and the number of man-days they would serve. It likewise had the discretion to determine who would be granted the annual benefit as well as the number of shares to be awarded. Qualified FWBs were thus, subject to the discretion or caprice of petitioner HLI, who could dilute or outrightly deny their entitlement to the shares of stocks.[209] It could play favorites and award man-days only to qualified FWBs who supported management while troublesome FWBs could be penalized by not allocating any man-days, thereby minimizing their entitlement to the shares.

Petitioner HLI's intent to reward the services of the farmworkers through the distribution of shares, which is also an incentive system to increase production is understandable. However, this scheme is more appropriate in the distribution of variable additional shares — not for the fixed minimum ratio necessary under a stock distribution option. Distribution of shares of stock based on the man-days rendered by the farmworker is more akin to **additional compensation** to an employee for services rendered. However, the CARL speaks of stock distribution as an alternative method to substitute direct land distribution and not as an added benefit to its employees.

The determination of qualified FWBs' shares based on the rolling criterion of man-days resulted in an expanded list of

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[208] *Id.*

[209] "The original farmers, under the man-days scheme of stock distribution can still be denied entitlement to a share of stock by just not allowing him to work. In effect, the matter of distribution of shares of stock was made totally dependent on the discretion of HLI management, for, by the simple expediency of denying employment, one will never qualify to receive a share irrespective of whether or not he is an original, regular and/or permanent worker." (PARC Council Resolution No. 2006-34-01 dated 03 May 2006, at 16-17; *rollo,* Vol. 1, at 422-423)

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beneficiaries. Had the 6,296 qualified FWBs opted for direct land transfer, they would not have worried about sharing their titles to the land with other farm workers who came to work in Hacienda Luisita after the SDOA. Under the land transfer option, the finite parcel of land is directly awarded to identified FWBs with titles and documents to evidence their individual ownership to the exclusion of others. In contrast, the SDOA allowed the number of beneficiaries to balloon to 10,502 stockholder-beneficiaries (and growing) for as long as they performed work in the farm. Regardless of whether they were original residents in the area or migrants from nearby provinces, subsequent farm workers could be included and thus, expand the number of recipients. This in turn diluted the rights and benefits the original FWBs should have enjoyed under the SDOA *vis-à-vis* the newer stockholders. On this ground alone, there is sufficient basis to recall and/or revoke the SDOA since it is contrary to the intent of a stock distribution to existing and qualified FWBs.

Prolonged Period of Distribution

The CARL provides in Section 31:

> "If within two (2) years from the approval of this Act, **the land or stock transfer envisioned above is not made or realized** or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act." (Emphasis supplied)

The two year period from the approval of the CARL contemplates three situational deadlines with respect to the agricultural landholdings of a corporate landowner: (1) the realization of a land transfer to qualified FWBs; (2) the realization of the stock transfer to qualified FWBs; and (3) the approval of the PARC of the stock distribution. The instant situation falls under number (3) above, but the question that was not clearly answered by the law is how many years after the PARC's approval of the stock distribution should it take before the stock transfer is actually completed. Whatever the timeframe may be, the thirty year period for the distribution of stocks is patently

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unreasonable and is not within the intent of a stock distribution option provided for by the CARL.

The piecemeal distribution of the shares over thirty years is an oppressive form of diminishing the value of the shares and is prejudicial to the interests of the FWBs. Apportioning the number of shares to the FWBs over a prolonged period reduces their capacity to enjoy their rights completely and immediately. For example, if petitioner HLI had declared cash dividends of ₱1.00 per share in the fifteenth year of distribution, then qualified FWBs would enjoy only half of the dividends owed them since they had yet to receive the other half of the shares allotted to them (assuming, of course, that they were to receive the same number of shares each year).[210] Rather than enjoy the full benefit of the shares of stock due and owed them, the FWBs are made to wait for three decades before they can appreciate the full benefits as a stockholder-beneficiary of petitioner HLI.

The inequity of the thirty-year period is highlighted when it is compared to the situation of an immediate land transfer. In a land transfer, a FWB can immediately feel the full benefit of land redistribution under the CARL upon the award of an emancipation patent or certificate of land ownership award and his actual physical possession of the land.[211] In sharp contrast

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[210] Petitioner HLI's proposal for the stock distribution even clarifies that the qualified FWBs will be entitled only to receive dividends whether cash or in stock, on the shares already distributed to them. This necessarily excludes their receipt of the announced dividends on the other shares to which they are entitled to but have yet to receive within the thirty year period. (*Rollo*, Vol. 3, at 3144)

[211] "The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land. Such award shall be completed in not more than one hundred eighty (180) days from the date of registration of the title in the name of the Republic of the Philippines: Provided, That the emancipation patents, the certificates of land ownership award, and other titles issued under any agrarian reform program shall be indefeasible and imprescriptible after one (1) year from its registration with the Office of the Registry of Deeds, subject to the conditions, limitations and qualifications of this Act, the property registration decree, and

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to the SDOA, the qualified FWBs were deprived of full ownership of the entire shareholdings due them under the staggered stock distribution scheme. Qualified FWBs, regardless of their age or health conditions, had to continue working for petitioner HLI for a period of thirty years if they wanted to realize the complete benefits of the SDOA. The protracted award of stocks nurtured a culture of forced dependency upon petitioner HLI on the part of the qualified FWBs.

No other conclusion can be drawn from the two year period provided for in the land and stock transfer under the CARL except that full transfer of benefits to the landless farmers under the land reform program should be immediate. The shortened period for distribution should likewise apply in cases of the PARC approval of the stock distribution scheme. It would, thus, be reasonable to expect that all the shares of petitioner HLI allocated to the qualified FWBs would have been completely and absolutely distributed to them **within two years** from the PARC's approval of the SDOA, or no later than 14 November 1991. In fact, the DAR was more exacting when it required the approved stock distribution plan be implemented **within three months** from receipt of the PARC approval.[212] It was wrong

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other pertinent laws. The emancipation patents or the certificates of land ownership award being titles brought under the operation of the torrens system, are conferred with the same indefeasibility and security afforded to all titles under the said system, as provided for by Presidential Decree No. 1529, as amended by Republic Act No. 6732."

"It is the ministerial duty of the Registry of Deeds to register the title of the land in the name of the Republic of the Philippines, after the Land Bank of the Philippines (LBP) has certified that the necessary deposit in the name of the landowner constituting full payment in cash or in bond with due notice to the landowner and the registration of the certificate of land ownership award issued to the beneficiaries, and to cancel previous titles pertaining thereto." (CARL, Sec. 24)

[212] "The approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the stock distribution plan. . . ." (DAR Administrative Order No. 10-88, Sec. 11)

for the DAR Special Team to allow implementation within **ten years**.[213] The two-year period is reasonably sufficient to realize the full transfer of shares and for qualified FWBs to understand and familiarize themselves with their rights and privileges as corporate stockholders.

Although operational and practical considerations may possibly permit some impediment to the automatic and complete transfer of shares, the gradual build-up[214] of shares of stock for a period of thirty years is simply wrong and defeats the objective of actual redistribution of land ownership to the farmers. **The CARL never envisioned the unreasonable delay in qualified FWBs' enjoyment of the benefits, which would have prolonged their suffering as landless farmers, especially when compared to the promptness of a land transfer option**. That petitioner HLI suddenly accelerated the distribution of the shares on 22 April 2005, more than fifteen years after the SDOA was signed,[215]

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[213] "2. While the SDO/SDP is an alternative arrangement to the physical distribution of lands pursuant to Section 31 of R.A. 6657, **logic and reason dictate that such agreement must materialize within a specific period during the lifetime of the CARP**, stating clearly therein when such arrangement must end. The aforementioned provision (CARL, Sec. 5) may be considered as the provision of the law on 'suspended coverage,' parallel to the provisions on Section 11 on Commercial Farming where coverage of CARP is deferred for ten (10) years after the effectivity of Republic Act No. 6657. Stated simply, owners of commercial farms are given a chance to recoup their investment for ten (10) years before same is finally subjected to coverage under the CARP." (Terminal Report dated 22 September 2005, at 14; *rollo*, Vol. 1, at 399)

[214] "On the matter of the need to protect the worker-beneficiaries' participation in the capital stock of the Company from dilution, we hereby guarantee that, happen what may during the time span of 30 years, the Company will have distributed to the worker-beneficiaries 33.296% of its outstanding capital stock at the end of the said period and that **while the interest of the worker-beneficiaries in the Company gradually builds up through the years until it reaches 33.296%,** their representation in the Board of Directors of the Company every year or at any given time will always be at the level of 33.296% or one-third (1/3) of the total number of seats in the said Board." (Letter dated 14 November 1989; *rollo*, Vol. 1, at 1311; emphasis supplied).

[215] On 22 April 2005, petitioner HLI completed the distribution of 3,433,167 shares of stock corresponding to Crop Year 2003-2004 to all its existing

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only shows that no operational difficulty could have prevented the prompt receipt by the qualified FWBs of their shares. That the accelerated distribution was approved by petitioner HLI fortuitously almost a year **after** private respondents filed their protests with the PARC[216] raises the suspicion that its benevolence was targeted precisely to mitigate opposition to the SDOA,[217] foreclosing rejection of the agreement due to the completion of the distribution of the shares. [218]

There is no justification, contrary to what petitioner HLI proposes, to compare the thirty-year period for distributing the stocks to the thirty annual amortizations, to be paid to the Landbank of the Philippines (LBP) the land transfer, required of the FWBs.[219] The thirty annual amortization payments to be

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stockholders of record as of June 2004. (Petitioner HLI Letter dated 09 June 2005 [*rollo,* Vol. 1, at 193])

[216] Private respondents Supervisory Group and AMBALA filed their protests with the PARC on 14 October 2003 and 04 December 2003, respectively.

[217] "It is our position that since Hacienda Luisita, Inc., owner of the agricultural portions of the property known as Hacienda Luisita, has accelerated after 15 years the distribution to its farmworker-beneficiaries of the entire 118,396,000 shares of stock that were originally scheduled to allocated over a period of 30 years under its Stock Distribution Option (SD), such act has completed the implementation of the said Stock Distribution option (SDO) as a vehicle of land reform and has, as a consequence, taken out of the ambit of agrarian reform Hacienda Luisita, Inc., to which the agricultural land belongs." (Comments dated 18 November 2005, at 7; *rollo*, Vol. 1, at 709)

[218] "Secondly, the allegation that all of the shares of stock have already been distributed to the farmers, by way of acceleration, was only triggered by the filing of protests/complaints by the disillusioned farmers against the SDP of TDC/HLI." (PARC Council Resolution No. 2006-34-01 dated 03 May 2006, at 8; *rollo*, Vol. 1, at 414)

[219] "Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in **thirty (30) annual amortizations at six percent (6%) interest per annum**. The annual amortization shall start one (1) year from the date of the certificate of land ownership award registration. However, if the occupancy took place after the certificate of land ownership award registration, the amortization shall start one (1) year from actual occupancy. The payments for the first three (3) years after the award shall be at reduced amounts as established by the PARC: Provided, That the first five (5) annual payments

made by the qualified FWBs are **beneficial** to the farmers, insofar as the LBP allows a prolonged period of time for them to pay for the lands transferred to them under preferable rates. In the case of amortization payments, the longer the period of payment, the better for the farmer since the obligation to pay is broken down to manageable installments. It also allows the farmers the full and complete use of the land, in order to immediately earn income, from which to source his amortization payments to LBP.[220] In sharp contrast, the thirty-year period of distributing shares under the SDOA is **detrimental** to the qualified FWBs; they are unable to enjoy their entitlement under a stock distribution scheme, since they have to wait several years before full transfer of all the shares due and owing to them.[221] Agrarian reform and land distribution was made to benefit the farmer by allowing immediate use of the redistributed land or rights thereunder while stretching the financial obligations or commitments out over manageable periods of time. The SDOA achieves the complete opposite by delaying the FWBs' acquisition of full rights as stockholders, and thus, must be struck down.

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may not be more than five percent (5%) of the value of the annual gross production as established by the DAR. Should the scheduled annual payments after the fifth (5th) year exceed ten percent (10%) of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, the LBP shall reduce the interest rate and/or reduce the principal obligation to make the repayment affordable. . . ." (CARL, Sec. 26)

[220] "The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land." (CARL, Sec. 24)

[221] "JUSTICE BRION: I see your point. My question is about the thirty (30) years. Where did these thirty years (30) years come from? Then I would like to suggest to you, counsel that you look at the land distribution scheme where there is the thirty (30) year period, under the land distribution scheme the transfer of the land would be immediate but the payment should be over a period of thirty (30) years. And now, what we are seeing here is a transfer of shares of stock contemplated to be for a period of thirty (30) years, but the transfer is not immediate, but supposedly there is no payment. So, it seems to me that ….

SOL. GEN. CADIZ: It is the reverse, Your Honor. In fact, thirty (30) years to pay; now it is thirty (30) years to acquire." (TSN dated 24 August 2010, at 46)

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Valuation of the Land

The identification and valuation of the corporate assets of petitioner HLI, as a spin-off corporation, was not subjected to verification and audit examination by the DAR and resulted in the undervaluation of the shares due to the qualified FWBs.

The value ascribed to the assets of the corporate landowner, especially the agricultural lands, is crucial as it determines the number of shares to be distributed to the qualified FWBs. Under a stock distribution option, the qualified FWBs are entitled to a proportion of the shares in accordance with the value of the agricultural lands actually devoted to agricultural activities in relation to the company's total assets.[222] The determination of the number of shares each qualified FWB should receive can be reduced to this mathematical formula:

$$\frac{\text{Value of Agricultural Lands}}{\text{Value of the Company's Total Assets}} \times \frac{\text{No. of Total Outstanding Shares of Stock}}{\text{No. of qualified FWBs}} = \text{No. of shares of stock for every qualified FWB.}$$

If the valuation given to the agricultural land is decreased the number of shares of each qualified FWB decreases. Moreover, the number of shares for each qualified FWB will decrease if the value of the company's total assets increases without a corresponding increase in the value of its agricultural lands. Given the significance of the valuation to the dynamics of stock distribution, the DAR required that the valuation of the corporate assets under the stock distribution plan be subject to verification and audit examination by the DAR and based on the DAR's own valuation guidelines.[223]

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[222] CARL, Sec. 31.

[223] "The valuation of corporate assets submitted by the corporate landowner-applicant in this proposal shall be subject to the verification and audit examination by DAR. The determination of the value of the agricultural land shall be based on the land valuation guidelines promulgated by the DAR." (DAR Administrative Order No. 10-88, Sec. 6)

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In this case, the values of the agricultural land or petitioner HLI's assets were never subjected to DAR verification or audit examination. When TADECO transferred the agricultural land together with other assets and liabilities, there was only the "imprimatur of the Securities and Exchange Commission by reason of its approval of the increase in the authorized capital stock" of petitioner HLI.[224] Petitioner HLI did not demonstrate that the values ascribed therein, especially to the agricultural land, were verified and audited by the DAR based on its own guidelines.

The absence of the DAR verification and audit of the values of the agricultural lands and petitioner HLI's total assets creates suspicion on the correctness of the number of shares distributed under the SDOA. Aside from the agricultural land, petitioner HLI included other non-land assets, such as machineries, land improvements and long term receivables, to increase the value of the total assets. However, inclusion of these other non-land assets served to diminish the ratio of the agricultural land to the total assets, and consequently decreased the proportional share to which the qualified FWBs were entitled to.

The assets and liabilities transferred by TADECO to petitioner HLI are broken down as follows:[225]

ASSETS TRANSFERRED			CAPITAL STOCK AND LIABILITIES		
	Value in ₱	%	Description	Value in ₱	%
1. Agricultural Lands (169 parcels of 4,915.7466	196,360,000	**33.27%**	*CAPITAL STOCK:* (**355,131,462**	355,131,462	60.14%

[224] "The above valuations of both assets and liabilities have been given the imprimatur of the Securities and Exchange Commission by reason of its approval of the increase in the authorized capital stock of Hacienda Luisita, Inc., the subscription to such increase of Tarlac Development Corporation, and the payment by Tarlac Development Corporation of its subscription thru transfer of assets and liabilities." (Proposal for Stock Distribution Option under the CARP at 9; *rollo*, Vol. 3, at 3739)

[225] Proposal for Stock Distribution Option under the CARP at 6-9; *rollo*, Vol. 3, at 3736-739.

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has., at ₱40,000 per hectare)			**shares** to petitioner HLI)		
2. Machinery and Equipment (Heavy equipment, farm tractors and farm implements)	43,932,600	7.44%	*LIABILITIES:* A. Notes Payable	62,334,106	10.56%
3. Current Assets (cash accounts receivables, inventories, growing crops and prepaid insurance)	162,638,993	27.55%	B. Accrued Expenses	11,854,547	2.01%
4. Land Improvements (roads, culverts, bridges, irrigation canals, equipment and appurtenant structures)	31,886,300	5.40%	C. Accounts Payable	86,873,899	14.71%
5. Unappraised Assets (railroad system and equipment, furniture and fixtures, communication and utility, other equipment, and construction in progress)	8,805,910	1.49%	D. Current Portion of LTD	9,560,000	1.62%
6. Long Term Notes Receivables	28,063,417	4.75%	E. Income Tax Payable	24,126,946	4.09%
7. Residential Land (11 lots of 120.9234 has.,	60,462,000	10.24%	F. Due to Affiliated Companies	4,533,260	0.77%

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at ₱500,000 per hectare)					
8. Lands used for roads, railways, canals, lagoons, parks, eroded portion, cemetery and water reservoir (187 lots consisting of 265.7495 has.)	58,135,000	9.85%	G. Long Term Debt	36,140,000	6.12%
TOTAL Assets	590,284,220	100%	TOTAL Capital Stock and Liabilities	590,284,220	100%

Based on the values of the assets and liabilities transferred, petitioner HLI's agricultural land of 4,915.7466 hectares was only 33.3% of its total assets, which means that the qualified FWBs were entitled to the same proportion with respect to the total capital stocks, or to 118,391,976.85 shares only.[226]

However, as pointed out by private respondent FARM, there were other lots in Hacienda Luisita that were not included in the stock distribution scheme, but should have been covered under the CARP.[227] TADECO, as the previous agricultural

[226] ₱196,360,000 (value of agricultural land) ÷ ₱590,554,220 (total value of company's assets) × 355,131,462 shares (capital stock) = **118,391,976.85 shares**.

[227] Table of Excluded Lands (Private Respondent FARM's Memorandum dated 24 September 2010, at 55-56; *rollo*, Vol. 3, at 3859-3860)

Description	Land Area (in Hectares)	
Total Land Area		6,443
Less:		
1. Sugar Mill Land	66	
2. Lands "Unfit for agriculture"	263	
3. Roads and Creeks	266	
4. Agro-Forest Land	159	
5. Residential Lots for Beneficiaries	121	
6. Reserve for Additional Homelots	652	
Total Exclusions		1,527
EQUALS: Land subject of SDOA		4,916

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landowner, preempted the determination of the lands to be covered under the CARP by selecting which of the agricultural lands it would transfer to petitioner HLI and consequently, subject to the SDOA. The DAR never approved the exclusion of the other lands that TADECO kept for itself. It seems incongruous to the intention of the CARP under a stock distribution agreement, to let the corporate landowner choose and select which of its agricultural lands would be included and which ones it would retain for itself. Serious doubts are entertained with respect to the process of inclusion and exclusion of agricultural lands for CARP coverage employed by the corporate landowner, especially since the excluded land area (1,527 hectares) involves one-third the size of the land TADECO surrendered for the SDOA (4,916 hectares). The exclusion of a substantial amount of land from the SDOA is highly suspicious and deserves a review by the DAR. Whether these lands were properly excluded should have been subject to the DAR's determination and validation. Thus, the DAR is tasked to determine the breadth and scope of the portion of the agricultural landholdings of TADECO and petitioner HLI that should have been the subject of CARP coverage at the time of the execution of the SDOA on 11 May 1989.

Private respondent also alleged that there was an undervaluation of the agricultural land and cited sources that would identify different valuations of the lands ranging from ₱55,000 per hectare to ₱500,000 per hectare. Assuming that these cited values were accurate, the claimed valuation of the agricultural land at ₱40,000 per hectare is very low and grossly disproportionate to the total assets.[228] Although no conclusive findings on the correctness of

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[228] "According to HLI, the farmer's 4,916 hectares were valued at ₱196.6 million, which amounts to ₱4 per square meter, or ₱40,000 per hectare. The 121 hectares contributed for homelots by TADECO, was valued at ₱60.5 million, or ₱500,000 per hectare. According to Putzel, all the lands were valued at ₱55,000/hectare in the books of TADECO in 1988 and that the land for the homelots and land improvements were valued at ₱6.7 million and ₱5.6 million respectively. (The SEC says that the records of TADECO's books are no longer available.)" (Respondent FARM's Memorandum at 57; *rollo*, Vol. 3, at 3861)

the valuations alleged is made for the mean time, as this is properly a function of the DAR, the exclusion of the DAR from the process of valuation of the agricultural lands to determine the qualified FWBs' proportional share in petitioner HLI is unacceptable. In fact, the Special Team noted that even the FWBs did not participate in the valuation of the agricultural lands.[229]

It is doubtful that the qualified FWBs had sufficient appreciation of the significance of the pooling of the agricultural lands and non-land assets transferred to petitioner HLI. Even assuming that the DAR approves the value of the agricultural land assigned by petitioner HLI and TADECO under the SDOA arrangement, the reality is that other non-land assets were included in the mix of corporate assets given by TADECO to petitioner HLI. Whether intentional or accidental, these additional non-land assets, which were almost twice the value of the agricultural lands affected, in all likelihood watered down the proportional share of the qualified FWBs under the SDOA. Qualified FWBs were thus relegated to being minority stockholders in petitioner HLI, without any real corporate strength to take effective control of the management of the corporation. In effect, TADECO obligingly transferred the agricultural land in paper to the qualified FWBs through the proportional delivery of shares of stock, but succeeded in retaining dominion over the real property by holding an almost two-thirds majority over petitioner HLI. The SDOA's arrangement of relegating the qualified FWBs to the status of minority stockholders is simply irreconcilable with the objective of empowering the qualified FWBs as stockholders in lieu of direct land distribution, as Justice Presbitero Velasco, Jr., illustrated during the oral arguments:

JUSTICE VELASCO:

I tend to agree with the statement made by Justice Perez that it is possible that it is the application of Section 31 that is erroneous

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[229] "Incidentally, the FWBs did not have participation in the valuation of the agricultural land for the purpose of determining its proportionate equity in relation to the total assets of the corporation. Apparently, the sugarland are undervalued." (Terminal Report dated 22 September 2005, at 18; *rollo*, Vol. 1, 403)

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and that it should have been the DAR and PARC that should have applied it correctly. **What I am trying to point out is the fact that in this [S]DOA of HLI, the farmer beneficiaries were made only minority stockholders but in order to achieve the policy behind the CARL to distribute income and wealth to the landless farmers then it must be a condition for the approval of the SDOA that the farmer beneficiaries should be the majority stockholders, or more importantly, that they should be the only stockholders of the corporation**. Meaning, to say they have full control over the use of the landholdings of the corporation. In such a situation it is as if the landholdings are being owned and managed by a cooperative of farmer beneficiaries or a farmer organization owns it and in such a situation the policies, goals behind the CARL can still be achieved, do you agree with that?[230] (Emphasis supplied)

To illustrate, corporate control of petitioner HLI would have been different if only the agricultural lands were transferred by TADECO. In that case, since the agricultural lands composed the only assets of the new corporate entity (petitioner HLI) without any liabilities, then the entirety of the shares of stocks would belong to the qualified FWBs.[231] Thus, the landless farmer beneficiaries would have full, absolute and collective control and management of the corporation, and thus exercise effective "owner-like" rights over the agricultural lands, similar to a land transfer option but under a different scheme. Taking the illustration a step further, a partnership of equality between the qualified FWBs and the corporate landowners could have at least been

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[230] TSN dated 24 August 2010, at 230-231.

[231] "There are a variety of means by which both to meet the constitutional requirement that regular farmworkers receive direct or collective ownership of the land they till and permit the continued operation of such corporate farms as are proven to be efficient in their present scale of operation. For example, separate corporate entities could be established, **with one corporation having ownership of all land assets coupled with the distribution of all the stock of that corporation to the worker beneficiaries**. Assuming existing operations were maintained; existing management retained, or comparable management hired; and wage and benefits levels remained constant, farm profitability would not differ significantly from previously levels. **However, the land-related portion of this profits would now benefit the farmworkers**." (Riedinger, *supra* note 4, at 160; emphasis supplied)

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achieved if the value of the other assets transferred were equal to or less than the value of the agricultural lands. In this scenario, the former corporate land owner and the qualified FWBs would have equal say on how petitioner HLI's business would be managed, such as with regard to purchasing properties and machineries for its business, introducing improvements on the lands, entering into loan agreements, mortgaging their lands as security, or even applying for conversion of idle lands.

In this case, however, TADECO was solely responsible for choosing which assets and liabilities it would transfer to petitioner HLI. Thus, it effectively designated how many shares qualified FWBs would receive *vis-à-vis* the ratio of the agricultural lands to the value of the total assets transferred. This arrangement created opportunities for TADECO to dilute the qualified FWBs' shareholdings by either "undervaluing the land assets or overvaluing the non-land assets."[232] It bears stressing that the incorporation of petitioner HLI and the subsequent transfer of the agricultural lands and other assets were undertaken by TADECO even before the qualified FWBs had agreed to the SDOA.[233] Furthermore, the SDOA was signed before the DAR had conducted a massive information campaign and conducted a referendum among the qualified FWBs.[234] Not only was there an issue as to the propriety of the valuations ascribed to the conveyed assets, serious doubts are entertained as to whether the qualified FWBs completely understood the effect of increasing the asset pool to their shareholdings, much less that they were

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[232] "The provision created obvious incentives to dilute the value of the workers' shares by either undervaluing the land assets or overvaluing the non-land assets." (Riedinger, *supra* note 4, at 159)

[233] Petitioner HLI was registered in the SEC only on 23 August 1988 and received the assigned agricultural lands and other assets from TADECO on 22 March 1989. However, the SDOA was signed by TADECO, petitioner HLI and the FWBs only on 11 May 1989.

[234] It was only after the SDOA was signed on 11 May 1989, that the DAR issued a massive information campaign on 14 October 1989 and conducted a referendum. (Petitioner HLI's Memorandum dated 23 September 2010, at 11; *rollo*, Vol. 3, at 3645)

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agreeing to a diminished or minority role in the running of petitioner HLI under the SDOA.[235]

Even the combined and unified 33.296% vote of all qualified FWBs would not significantly sway major corporate decisions of petitioner HLI. Regardless of how the minority directors of the qualified FWBs were to vote, the majority would be able to railroad any corporate act it deems fit. The authority the qualified FWBs would have over the corporate affairs of petitioner HLI[236] would be a mere token representation, lacking effective control in determining the direction of the corporate entity having ownership and possession of the agricultural land. The inequity is made more apparent if it is remembered that the main asset of the corporation — the agricultural land — could have been entirely under the FWBs' names under a land distribution scheme.

Agrarian reform was instituted under the Constitution to liberate ordinary farmers from their dependency on the landowners, but not at the expense of exchanging their bondages for corporate serfdom[237] under a meaningless stock distribution scheme. In this case, although no express pronouncement as to the validity of a stock distribution scheme under the CARL is made, the stock distribution arrangement in Hacienda Luisita is fatally flawed on the basis of the three grounds discussed earlier and must be struck down.

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[235] "The problem was not really that the farmworkers on the *hacienda* were denied the freedom of expression or the right to choose, as one peasant organization charged. **It was rather that farmworkers, tenants and the landless rural poor continued to be denied an environment that would allow them to identify what their choices were**." (James Putzel, *A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES* [Ateneo de Manila University Press 1992] at 335)

[236] The stock distribution arrangement "contemplates of allowing the farmer-beneficiaries from the very start to occupy such number of seats in the board of directors of the corporate landowner as the whole number of shares of stock set aside for distribution may entitle them, so that they could have a say in forging their destiny." (Proposal for Stock Distribution under C.A.R.P. [May 1989] at 17; *rollo*, Vol. 3, at 3747)

[237] Respondent FARM's Memorandum at 60; *rollo*, Vol. 3, at 3864.

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No Violation of Due Process or the Non-Impairment Clause

Petitioner HLI's broad invocation of violation of its rights to due process and the non-impairment clause is without merit.[238]

First, petitioner HLI assails the failure on the part of public respondent PARC to afford it an opportunity to submit evidence to support its case. However, the records show that petitioner HLI was able to present its opposition to private respondents' petitions in the proceedings below. Public respondent PARC even issued an order requesting petitioner HLI to submit comments and/or oppositions to the petitions filed by private respondents Supervisory Group and AMBALA and also furnishing it copies of the said petitions.[239] In fact, the Technical Working Group even met with the legal counsel of petitioner HLI to discuss the extent of petitioner HLI's compliance with the SDOA and to clarify some of the SDOA's provisions.[240]

Petitioner HLI likewise assails the failure of the questioned PARC Resolution to state the facts and the law on which the ruling is based.[241] The questioned PARC Resolution adopted the recommendations of the PARC Executive Committee to revoke/recall the approval of the SDOA and to cause the agricultural lands in Hacienda Luisita to be subject to compulsory coverage. It is not *per se* wrong for an administrative agency, such as the PARC, to adopt wholesale the reports of its representatives or designated teams, which were specifically mandated to conduct an investigation of the matter, and which

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[238] Petitioner HLI's Memorandum at 47-48; *rollo*, Vol. 3, at 3689-3690.

[239] DAR Order dated 06 December 2004; *rollo*, Vol. 3, at 3750.

[240] "The Technical Working Group had a meeting with Atty. Jun dela Merced, HLI Legal Counsel, where the extent of HLI's compliance and some clarification on the MOA entered into by and between the corporation and the FWBs were discussed." (Terminal Report dated 22 September 2005, at 7; *rollo*, Vol. 1, at 392)

[241] "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." (CONSTITUTION, Art. VIII, Sec. 14)

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possessed the competence to perform the task. In this case, the Terminal Report of the DAR Special Team outlined the allegations of the petitions and petitioner HLI's defenses, and clearly set forth its findings with respect to its recommendation to recall/ revoke the SDOA. Unless there is a blatant factual error or misapplication of the law or its rules, nothing prevents the administrative agency from affirming the delegated authority's recommendations *in toto*.

Although public respondent PARC failed to attach a copy of the Terminal Report and recommendation of the PARC Executive Committee, this lapse in procedure is not so grave as to warrant absolute nullification of the questioned PARC Resolution. In any case, petitioner HLI was subsequently furnished said documents, which were used as well in furthering the instant petition before the Court.

Second, petitioner HLI's insistence on the non-impairment clause is misplaced, as it deals with a fundamental right against the exercise of legislative power, and not of judicial or quasi-judicial power.

In *Lim v. Secretary of Agriculture*, the Court explained the scope of the non-impairment clause thus:

> For it is well-settled that a law within the meaning of this constitutional provision has reference primarily to statutes and ordinances of municipal corporations. Executive orders issued by the President whether derived from his constitutional power or valid statutes may likewise be considered as such. **It does not cover, therefore, the exercise of the quasi-judicial power of a department head even if affirmed by the President.** The administrative process in such a case partakes more of an adjudicatory character. It is bereft of any legislative significance. It falls outside the scope of the non-impairment clause.[242] (Emphasis supplied)

In the instant case, the recall/revocation of the SDOA is necessarily an exercise of the PARC's quasi-judicial power. Public respondent PARC was made to decide conflicting claims

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[242] 34 SCRA 751, 764 (1970).

based on petitioner HLI's purported violations of the provisions of the SDOA. There was an adjudication of the respective rights of the parties to the SDOA, as well as the validity of the SDOA. The questioned PARC resolution was not a legislative act or an administrative order that prescribed regulations applicable to all kinds of stock distribution options; it was a decision on the competing allegations of non-performance under the SDOA, which was sought to be enforced. No less than petitioner HLI's counsel concedes that the assailed acts of public respondent PARC were not legislative in nature for purposes of invoking the non-impairment clause under the Constitution.[243]

Petitioner HLI also argues that it has substantially complied with and performed the obligations under the SDOA for the past sixteen (16) years; thus, public respondent PARC is precluded from reviewing the agreement and ordering its nullification. As earlier discussed, the SDOA was subject to approval of compliance by public respondent PARC, in order to ensure that the obligations of the corporate landowner would not become hollow promises. What is contemplated in the CARL is conferment on the qualified FWBs of their full rights as stockholders, in the same manner as title and ownership of the land are absolutely transferred to the farmer-beneficiary in a land transfer scheme. In fact, no less than the Section 31 of the CARL allows for compulsory coverage of agricultural lands in the event that the stock transfer is not made or realized. Piecemeal and delayed distribution of shares should likewise result in the same penalty.

In arguing that it has substantially complied with the CARL, petitioner HLI would seek to capitalize on the benefits it extended to the qualified FWBs in terms of salaries, wages, fringe benefits, free hospital and medical services, vacation and sick leaves, amelioration bonus, school bus allowances for dependents, emergency relief allowances, maternity benefits, financial benefits

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[243] "JUSTICE MORALES: So, my question now is, again I sound like a broken record, are the assailed acts of PARC considered legislative for you to invoke the Constitutional non impairment clause?

ATTY. ASUNCION: My answer is no, your Honor please." (TSN, 18 August 2010, at 66)

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due to old age/death and various loans. However, these benefits were derived from the employer-employee relationship between petitioner HLI and the farmworkers. Petitioner HLI gave farmworkers their salaries and extended other employment benefits for the man-days that the latter rendered in favor of the company, and not because they were qualified FWBs. The obligations of the corporate landowner to give salaries and benefits to farmworkers are founded on different legal bases as opposed to its obligation to provide the benefits of a genuine stock distribution option to qualified FWBs. Indeed, the CARL provides that nothing in the implementation of the stock distribution scheme shall justify the reduction or diminution of the benefits received or enjoyed by the worker/beneficiaries.[244]

Petitioner HLI's enumeration of the benefits is out of place in the present controversy surrounding the stock distribution option, since these were granted in exchange for the services rendered by the farmworkers to the former. Petitioner HLI cannot claim magnanimity in extending these benefits, when it received a fair day's labor from the farmworkers.

Neither can petitioner HLI have the petitions dismissed on the ground of the ten-year prescriptive period for actions for specific performance or cancellation of civil contracts.[245] Allowing the distribution of the shares to stretch for a period of thirty years before the SDOA can be deemed completely implemented tolls the prescriptive period for an action to cancel it. Hence, the mere lapse of 10 years should not preclude qualified FWBs from questioning the 30-year SDOA, especially if the violation was committed or discovered in the eleventh or subsequent years. It would be prejudicial to the interests of qualified FWBs to deny them a remedy for the continued non-performance of petitioner HLI's obligations, when these obligations have not yet been completely satisfied and remain to be continuing obligations for thirty years.

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[244] "In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced." (CARL, Sec. 31)

[245] CIVIL CODE, Art. 1144.

THE WAY FORWARD

Reversion of Hacienda Luisita Lands to Compulsory Coverage

Since the SDOA was patently void and failed to properly distribute the shares of petitioner HLI to the 6,296 original qualified FWBs, the questioned PARC Resolutions revoking the SDOA and **ordering the compulsory coverage of the entire Hacienda Luisita agricultural lands under the CARL** should be affirmed.

The change of modality, from the alternative mode of stock distribution option to the general rule of direct land redistribution[246] under compulsory coverage, is explicitly sanctioned under Section 31 of the CARL.

Section 29 should also be recalled herein:

> In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC:
>
> **In general, lands shall be distributed directly to the individual worker-beneficiaries.**
>
> **In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association.** Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association, any agreement existing at the time this Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation or business association.

In exchange, petitioner HLI as the previous landowners is entitled to the payment of just compensation of the value of the land at the time of the taking. Since the award of direct land transfer is being settled by the Court only now, then the

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[246] "Only a programme that makes land redistribution central to the logic of reform can help to break both the economic and political ties of dependence and subordination between the rural poor and their patrons." (Putzel, *supra* note 235, at 33-34)

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value of the property should be similarly pegged at this point. The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property as between one who receives and one who desires to sell, if fixed **at the time of the actual taking by the government**.[247]

For purposes of just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of taking.[248] Therefore, the proper reckoning period to determine the value of the lands of petitioner HLI and/or TADECO is at the time of the taking, which approximates the fair market value of the properties as they stand now, and not as they were two decades ago. The fair market value takes into consideration the evolving nature of the land and its appreciated value, arising from the improvements introduced by petitioner HLI into the area, as well as the development in neighboring lands.

I differ from the position of Justice Brion that would reckon the taking from the time the SDOA was entered into, on 11 May 1989, and yet deprive petitioner HLI of interest payments in the interim. The proposal amounts to undue hardship on the part of petitioner HLI as the previous landowner. While it is the duty of the Court to protect the weak and the underprivileged, this duty should not be carried out to such an extent as to deny justice to the landowner.[249]

Pegging the value of the property to the time of the execution of the SDOA almost twenty years prior will undoubtedly affect

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[247] *LBP v. Rivera*, G.R. No. 182431, 17 November 2010, citing *Republic v. Court of Appeals*, 433 Phil. 106 (2002).

[248] *LBP v. Livioco,* G.R. No. 170685, 22 September 2010, citing *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, G.R. No. 149621, 05 May 2006, 489 SCRA 590, 613.

[249] *Landbank of the Philippines v. Heirs of Domingo*, G.R. No. 168533, 04 February 2008, 543 SCRA 627, citing *Landbank of the Philippines v. Court of Appeals*, 319 Phil. 246, 249 (1995).

the valuation of the property. The improvements there and the developments in neighboring areas contributed to the increase in the land's value, regardless of whether they were introduced by petitioner HLI or not. The appreciation of the value will not be accounted for if the price is to be pegged at 1989. The increases in value cannot be ignored or taken away from petitioner HLI, if compensation to it as a landowner is to be considered just. "The word 'just' is used to intensify the meaning of the word 'compensation' and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample."[250] Compensation cannot be real, substantial, full and ample if the price paid for the property expropriated under CARL is made to retroact the value of the land to more than two decades prior to the actual taking.

The payment of interest from the execution of the SDOA up to full satisfaction of just compensation may have presumably approximated the improvements and the appreciation in the land's value throughout the years. Certainly, the computation of the amount of interest from 1989 would entail additional inconvenience, if not another future source of conflict, to the parties and the DAR. There are differences in the values of some of the portions of the land, and our jurisprudence on entitlement to interest involving government payments here have been less than clear and definitive. Yet, the proposal forwarded by Justice Brion would value the land at its decreased level in 1989 and at the same time deny interest from 1989, on the ground that petitioner HLI never lost possession of the lands because of the SDOA. Hence, petitioner HLI would be made to suffer twice the loss of its lands — *first*, by paying its properties at the 1989 levels; and *second*, by ignoring improvements made on the lands, which have appreciated its value.

The more equitable and just option under our jurisprudence that accounts for petitioner HLI's twin losses of land and improvements is to allow payment of the fair market value of the property at the time of the taking. Regardless of whether

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[250] *NAPOCOR v. Diato-Bernal*, G.R. No. 180979, 15 December 2010, citing *Republic v. Libunao*, 594 SCRA 363, 376 (2009).

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the Hacienda Luisita lands remain viable as agricultural land or gain more substantial economic value for non-agricultural purposes, petitioner HLI will be justly compensated for the properties. Meanwhile, the FWBs will gain more from the direct transfer of valuable lands, and their freedom, as owners, to determine for themselves the best use for the lands according to their present nature and character. Although compensation may cause certain financial hardship to the government, there are various modes of payment of just compensation under the CARL,[251] which it can explore in order to give what is due to petitioner HLI for the lands subject of direct land transfer. As proposed here, the amount of just compensation owed to petitioner HLI, may be offset by its liabilities to the government and the qualified FWBs.

I cannot subscribe either to the imposition of liability upon petitioner HLI for the payment of rentals from 1989 as a form of damages in favor of the qualified FWBs. The rental payments would connote that petitioner HLI used the land, now belonging to qualified FWBs, to the exclusion of the owners. However, the land did not yet belong to the qualified FWBs at the time the property was being used by petitioner HLI; thus, they cannot demand payment for the use of the land that they did not yet own at that time. It would be iniquitous to extract from petitioner HLI reasonable compensation for the use of the Hacienda Luisita lands from the execution of the SDOA, when the properties were properly under its name and without any cloud of doubt as to its title thereto.

The Operative Facts Doctrine Inapplicable.

Our system of laws will be turned on its head by the application of the "doctrine of operative facts" in this case. It must be remembered that this doctrine is the exception; as an exception, it can only be applied sparingly under the right set of circumstances.

A very clear explanation of the doctrine is provided by former Chief Justice Fernando in his *ponencia* in *De Agbayani v.*

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[251] CARL, Sec. 18.

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Philippine National Bank[252] and his Concurring Opinion in *Fernandez v. P. Cuerva & Co.*[253] His analysis of the doctrine consists of a two-step process.

He first lays down the basic proposition:

… The decision now on appeal reflects the orthodox view that **an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties**. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "**When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern**. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.[254]

The orthodox views finds support in the well-settled doctrine that the Constitution is supreme and provides the measure for the validity of legislative or executive acts. Clearly then, **neither the legislative nor the executive branch, and for that matter, much less, this Court, has power under the Constitution to act contrary to its term**. Any attempted exercise of power in violation of its provisions if to that extent unwarranted and null.[255]

Then he recognizes that some effects of the invalid act may be recognized as an exception to its consequent nullity but always in the context of the particulars of a case and not as a matter of general application:

This doctrine admits of qualifications, however. As the American Supreme Court stated: "The actual existence of a statute prior to such a determination [of constitutionality], is an operative fact and

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[252] G.R. No. L-23127, 29 April 1971, 38 SCRA 429.

[253] G.R. No. L-21114, 28 November 1967.

[254] *De Agbayani v. Philippine National Bank, supra*.

[255] Concurring Opinion, *Fernandez v. P. Cuerva & Co., supra*.

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may have consequences which cannot always be erased by a new judicial declaration. **The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular regulations, individual and corporate, and particular conduct, private and official**.[256]

Such exceptions have, for a very long time, recognized only instances when inequity would result from completely disregarding the good faith compliance with **statutes** before they were pronounced unconstitutional.

Manila Motor Co., Inc., v. Flores[257] and *De Agbayani v. Philippine National Bank*,[258] cited by the *ponencia*, and *Republic v. Herida*,[259] and *Republic v. CFI*,[260] cited by Justice Brion, all involve the application of the debt moratorium laws. In those cases, the Court held that during the period from the effectivity of the debt moratorium laws until they were struck down as unconstitutional in *Rutter v. Esteban*,[261] the parties could not be faulted for relying on the belief that the payment of debts was suspended by virtue of the debt moratorium laws. In *Fernandez v. P. Cuerva & Co.*,[262] another case relied on by the *ponencia*, another statute — the Reorganization Law – was the invalid act declared by the Court. In *Rieta v. People*,[263] also relied on by the *ponencia*, again another statute — General Order No. 60 issued by former President Ferdinand Marcos under his martial law legislative power — was invalidated.

While the *ponencia* claims that the application of the doctrine of operative facts to executive issuances is well-settled in our

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[256] *Id.*, citing *Chicot Country Drainage Dist. vs. Baxter States Bank*, 308 US 371 (1940).

[257] G.R. No. L-9396, 16 August 1956, 99 Phil. 738.

[258] G.R. No. L-23127, 29 April 1971, 38 SCRA 429.

[259] G.R. No. L-34486, 27 December 1982, 119 SCRA 411.

[260] G.R. No. L-29725, 27 January 1983, 120 SCRA 154.

[261] G.R. No. L-3708, 18 May 1953, 93 Phil. 68 (1953).

[262] G.R. No. L-21114, 28 November 1967.

[263] G.R. No. 147817, 12 August 2004, 436 SCRA 273.

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jurisprudence, the *ponente* relies on **only two cases** to support this claim — *City Government of Makati v. Civil Service Commission*,[264] and *Chavez v. National Housing Authority, R-II Builders, Inc., et al.*[265] In both instances, **clear considerations of equity were present.**

In *City Government of Makati*, a city employee was arrested without warrant and incarcerated for three years, until acquitted of the crime charged. Meantime, she was suspended on account of the arrest. Because she could not report for work, as she was in jail, she was dropped from the rolls for being absent without leave for more than a year. After her acquittal, she requested her reinstatement, but this request was repeatedly denied due to the lack of an approved leave. Her case was brought to the Civil Service Commission and the Court of Appeals, and both sustained her right to be reinstated. The Court deemed that the city government's order of suspension was equivalent to an approved leave of absence, inasmuch as it was the city itself that "placed her under suspension and thus excused her from further formalities in applying for sick leave. Moreover, the arrangement bound the city government to allow private respondent to return to her work after the termination of her case."[266]

The City of Makati raised as an alternative defense the theory that the order of suspension could not have created the above effect, as it was void considering there was no pending administrative charge against her; thus, the employee was still required to file a leave application. The Court held that it could not go to the extent of declaring the suspension order void, as competence was presumed to reside in the City's personnel officer who issued the suspension order. Further, even if it were void, "(i)t would indeed be ghastly unfair to prevent private

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[264] G.R. No. 131392, 06 February 2002, 376 SCRA 248.

[265] G.R. No. 164527, 15 August 2007, 530 SCRA 235.

[266] "This pledge sufficiently served as legitimate reason for her to altogether dispense with the formal application for leave; there was no reason to, as in fact it was not required, since she was for all practical purposes incapacitated or disabled to do so." (*City Government of Makati v. Civil Service Commission*, *supra*.)

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respondent from relying upon the order of suspension in lieu of a formal leave application."[267]

The application of the doctrine of operative facts in *Chavez v. NHA and R-II Builders Inc.*, as in *City of Makati* was not made in a vacuum. It was applied considering the following:

> The SMDRP agreements have produced vested rights in favor of the slum dwellers, the buyers of reclaimed land who were issued titles over said land, and the agencies and investors who made investments in the project or who bought SMPPCs. These properties and rights cannot be disturbed or questioned after the passage of around ten (10) years from the start of the SMDRP implementation. Evidently, the "operative fact" principle has set in. The titles to the lands in the hands of the buyers can no longer be invalidated.

No similar demands of equity apply in this case. In fact, equity cannot apply in the clear presence of law. Section 31 of the CARL clearly mandates this Court to order land distribution. To recall:

> If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.

That the doctrine of operative facts must be applied strictly only to instances in which the law is silent, and the equity remedies of this Court are called for, is clear from two Decisions of this Court.

In *Republic v. CA & Henrico Uvero, et al.*,[268] the Court held:

> A judicial declaration of invalidity, it is also true, may not necessarily obliterate all the effects and consequences of a void act occurring prior to such a declaration. Thus, in our decisions on the moratorium laws, we have been constrained to recognize the interim effects of said laws prior to their declaration of unconstitutionality,

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[267] *City Government of Makati v. Civil Service Commission, id.*

[268] G.R. No. 79732, 08 November 1993, 227 SCRA 509.

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but there we have likewise been unable to simply ignore strong considerations of equity and fair play. So also, even as a practical matter, a situation that may aptly be described as *fait accompli* may no longer be open for further inquiry, let alone to be unsettled by a subsequent declaration of nullity of a governing statute.

The instant controversy, however, is too far distant away from any of the above exceptional cases. To this day, the controversy between the petitioner and the private respondents on the issue of just compensation is still unresolved, partly attributable to the instant petition that has prevented the finality of the decision appealed from. The fact of the matter is that the expropriation cases, involved in this instance, were still pending appeal when the EPZA ruling was rendered and forthwith invoked by said parties.

In *Planters Products v. Fertiphil*,[269] the Court summed up its view on the application of the doctrine thus:

At any rate, We find the doctrine inapplicable. The general rule is that an unconstitutional law is void. It produces no rights, imposes no duties and affords no protection. It has no legal effect. It is, in legal contemplation, inoperative as if it has not been passed. Being void, Fertiphil is not required to pay the levy. All levies paid should be refunded in accordance with the general civil code principle against unjust enrichment. The general rule is supported by Article 7 of the Civil Code, which provides:

> Art. 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse or custom or practice to the contrary. When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration.

The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid

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[269] G.R. No. 166006, 14 March 2008, 548 SCRA 485.

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law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it.

Here, We do not find anything iniquitous in ordering PPI to refund the amounts paid by Fertiphil under LOI No. 1465. It unduly benefited from the levy. It was proven during the trial that the levies paid were remitted and deposited to its bank account. Quite the reverse, it would be inequitable and unjust not to order a refund. To do so would unjustly enrich PPI at the expense of Fertiphil. Article 22 of the Civil Code explicitly provides that "every person who, through an act of performance by another comes into possession of something at the expense of the latter without just or legal ground shall return the same to him." We cannot allow PPI to profit from an unconstitutional law. Justice and equity dictate that PPI must refund the amounts paid by Fertiphil.

Republic v. CA & Uvero denied the application of the doctrine of operative facts. The government had wanted the Court to apply the doctrine to fix the value of the just compensation for the expropriated land of private respondents at the rate fixed by Presidential Decree No. 76, which was valid at the time of the expropriation, but invalidated by the time *Uvero* was decided. The Court held that since the just compensation had never been completely settled, the situation was far from calling for the application of the doctrine.

In *Planters Product*, the Court denied the application of the doctrine of operative facts, because there was nothing inequitable or iniquitous in ordering Planters Products, Inc., from returning to Fertiphil Corporation all the amounts the latter paid pursuant to a letter of instruction (LOI) President Marcos had issued to that effect. This LOI was found unconstitutional by the trial court, and this finding was affirmed by both the Court of Appeals and by the Supreme Court. In fact, this Court found that what would be inequitable and unjust is for Planters Products, Inc., to retain the amounts held.

While substantial justice is the underlying aim of agrarian reform, it is equally true that equity may only be applied where positive law is silent. That the operative facts doctrine is one

of equity has been discussed by the majority. In the same breath, the majority fails to delineate a clearly entrenched legal rule from an equitable rule, glossing over the fact that equity cannot take the place of positive law. Aptly described as "a justice outside legality," this doctrine is applied only in the absence of, and never against, statutory law. *Aequetas nunquam contravenit legis*.[270]

For all its conceded merit, equity is thus only available in the absence of law, and not as its replacement. Equity has no application, as to do so would be tantamount to overruling or supplanting the express provisions of law.[271]

The pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity.[272] To state otherwise would tolerate impunity in litigation.

In this case, Section 31 of the CARL is clear — the lands must be distributed if the stocks are not distributed. The validity of both the SDP and the SDOA is in question and unsettled. It would be unjust and inequitable to withhold from the qualified FWBs what is due them — their appropriate portions of the land. Petitioner HLI can have its shares back from the qualified FWBs and be paid just compensation. It would not suffer from any injustice by the application of the law.

On the other hand, if we call this a case in which equity is due petitioner HLI, then we encourage impunity. Impunity is when we reward the violation of the SDP by allowing its implementation to be marred by the illegalities that we have found here. In all the cases cited, the doctrine is never a reward for illicit acts as performed here. What this Court would signal is that it is rewarding a hollow promise of compliance with the law in order to obtain an administrative permit; then, after the

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[270] *Zabat v. Court of Appeals*, No. L-36958, 10 July 1986, 142 SCRA 58.

[271] *PTA v. St. Mattew Christian Academy*, G.R. No. 176518, 2 March 2010, 614 SCRA 41.

[272] *Causapin v. Court of Appeals*, G.R. No. 107432, 4 July 1997, 233 SCRA 615, 625.

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permit has been obtained, break the law, since the lawbreakers can have this illicit act validated by the Court. This must absolutely not happen.

The doctrine of operative facts cannot apply either for two important reasons: (1) it will legitimize the injustice committed to the FWBs when their collective shares were arbitrarily reduced to only 33% of petitioner HLI through the undervaluation of the transferred assets; and (2) it will legitimize a second illegal reduction of the shares of the FWBs when more stockholders were added to their collective group. This Court cannot allow them to waive the rights that were granted to them under the social justice clause of the Constitution.

It strains reason how qualified FWBs can be allowed the "false choice"[273] of agreeing to a patently illegal SDO scheme, especially when their approval of the SDOA will not even improve their standing in the corporation, but only allowed to continue being minority stockholders. The vulnerability of qualified FWBs under the voting option is underscored by their current economic hardships and their desperate need for immediate financial assistance, as explained by counsel for FARM, Atty. Christian Monsod:

ATTY. MONSOD:

Both of them bad. Yes, Your Honor, because the farmers have other options than merely accepting one thousand three Hundred or one thousand four hundred square meters where they put in Seven Thousand Eight Hundred square meters into the enterprise. They can have the land, if they get the land there are many modalities, there are many ways by which they can be helped by government by which they can earn more from the land and if your read Your Honor all the answers of the farmers on why they got the money, there is not a single one I read, maybe you did, but I did not read a single answer of the farmers saying it was excellent, it was a good deal for us. **They say — we have no money, we have no food better there is cash now, you know, I need it, how long will I have to wait for the case, it has been four (4) years I cannot wait much**

[273] "ATTY. MONSOD: The compromise agreement presents the farmers with two (2) false choices." (TSN dated 24 August 2010, at 218)

longer at least there is something here that I am getting and maybe 20 Million, maybe another 30 Million to do it. I have not read any reply of the farmer that does not reflect the fact that he is in a desperate, no choice situation that means there is something wrong with it. Now, for example, Your Honor, there is a portion there that says — you will get that measly one thousand three hundred or one thousand four hundred square meters because of the thirty three (33%) thing. And said — if you want to sell, Hacienda Luisita has a right of first refusal, it is three hundred sixty (360) days right of first refusal. If a farmer needs money very badly there is a good offer from his land and he needs it, he goes to Hacienda Luisita and Hacienda Luisita will make him wait to three hundred sixty (360) days, don't you think he will accept a much lower price because precisely he is on the edge of survival. This is the kind of option that has been given to the farmer. DAR was not asked to participate in this process, when they are asked why the DAR was not participating they said DAR can say its opinion in the Supreme Court. But precisely DAR was needed in order to make sure that the consent of the famer was not vitiated that there was a reciprocity of values which there is none here.[274] (Emphasis supplied)

The compulsory coverage of the agricultural lands of petitioner HLI will not necessarily result in its automatic dissolution as a corporate entity. It must be remembered that the "sale" of the agricultural lands in this instance is not the ordinary business transfer of corporate assets as approved by petitioner HLI's stockholders in accordance with the Corporation Code;[275] the

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[274] TSN dated 24 August 2010, at 219-220.

[275] "Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or in case of non-stock corporation, by the vote of at least to two-thirds (2/3) of the members, in a stockholder's or member's meeting duly called for the purpose. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and

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transfer of the agricultural land to qualified FWBs is in the exercise of the state's expropriation powers to take property for a legal objective (agrarian land reform) upon due payment of just compensation. Neither can the taking of the agricultural lands of petitioner HLI (which are only 33.296% of its total assets) be considered as substantially all of its assets under the Corporation Code,[276] since the corporation is not rendered incapable of engaging in the business of "planting, cultivation, production, purchase, sale, barter or exchange of all agricultural products."[277]

In fact, after the transfer of the agricultural land is transferred to the qualified FWBs, nothing prevents petitioner HLI from buying or leasing the same lands from them as a collective entity, and continuing to conduct its primary business. In any event, the expropriation of the agricultural lands under the CARL will not result in the dissipation of the assets of petitioner HLI, since it will be compensated by the government for the agricultural lands expropriated, proceeds from which can be used to continue with the business, to fund the lease of agricultural lands, or to pay for any debts or liabilities incurred by petitioner HLI. Whether the stockholders of petitioner HLI will agree to continue with the business or initiate the process of dissolution is a matter that will have to be addressed in another forum, and not before the Court at this time.

With respect to the SCTEX lands, petitioner HLI has not denied receipt of the ₱80,000,000 from the government as just compensation. The just compensation paid for the expropriated lands properly belongs to the qualified FWBs, as they should now be considered as the rightful land owners under the direct

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deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code." (Batas Pambansa Blg. 68, Sec. 40)

[276] "A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated." (Batas Pambansa Blg. 68, Sec. 40)

[277] Amended Article of Incorporation of petitioner HLI; *rollo*, Vol. 3, at 3762-3776.

land transfer option. Having been subjected to expropriation by the government, the SCTEX land is now invariably outside the scope of CARP coverage. However, since the qualified FWBs became the valid landowners before the said expropriation, the just compensation should accrue to them. What they seek — and indeed, what should be conveyed to them — is not only the landholdings *per se*, but also all payments that had rightfully accrued to them as landowners by virtue of the notice of coverage. This amount includes the total of ₱80,000,000 received by petitioner HLI as just compensation, and not just the 3% HLI claims it paid. Although it asserts having distributed 3% of the proceeds or ₱2,400,000, no evidence on the record supports its bare assertion. The amount given is important, as it may decrease petitioner HLI's liability to the qualified FWBs. Be that as it may, this fact does not detract from the qualified FWBs' entitlement to the just compensation paid by the government for lands properly belonging to them.

The division of Hacienda Luisita lands may indeed result in inefficient economies of scale, wherein 6,296 qualified FWBs will receive only a small portion of the land that was claimed by petitioner HLI to be inadequate to significantly improve their economic conditions.[278] Nevertheless, nothing prevents the farmworker beneficiaries from organizing themselves into a cooperative to manage the agricultural lands or to deal with petitioner HLI as suggested by the DAR,[279] considering that

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[278] However, Jeffrey Riedinger presented contrary claims that "that small sugar cane farms were more efficient in terms of total factor productivity" and that "Philippine sugarcane yields were, on average, little more than one-half of those of the small (1 to 2 hectare) owner operated farms of Taiwan, and only one-quarter yields obtained on small owner-operated farms in Maharashtra state in western India." (Riedinger, *supra* note 4, at 80-85) Riedinger even asserted that "[a]nalysis suggests that the workers would be no worse off, indeed might be substantially better off, if they were to purchase the land assets of Hacienda Luisita under the terms of the reform law rather than accept the proposed 'no cost' stock distribution." (*Id.*, at 150)

[279] "DAR has established guidelines on the matter of such allocations and no problem has been encountered in its implementation of the CARP. **By and large for a whole scale cultivation and production, formation of cooperatives has proven to be an effective mechanism to address the**

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even CARL makes provisions for such alternatives for farms operated by corporations or associations.[280]

In addition, considering the lapse of the prohibitive period for the transfer of agricultural lands, nothing prevents the FWBs, as direct owner-beneficiaries of the Hacienda Luisita lands, from selling their ownership interest back to petitioner HLI, or to any other interested third-party, such as but not limited to the government, LBP, or other qualified beneficiaries, among others. Considering that the Hacienda Luisita lands were placed under CARP coverage through the SDOA scheme of petitioner HLI on 11 May 1989 and the lapse of the two-year period for the approval of its compliance, the period prohibiting the transfer of awarded lands under CARL[281] has undeniably lapsed. As landowner-beneficiaries, the qualified FWBs are now free to transact with third parties with respect to their land interests, regardless of whether they have fully paid for the lands or not.

To make the qualified FWBs of Hacienda Luisita wait another 10 years from the issuance of the Certificate of Land Ownership

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problem. . . ." (Terminal Report dated 22 September 2005 at 13; *rollo*, Vol. 1, at 398).

[280] "In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association. . . ." (CARL, Sec. 29, 2nd par.)

[281] "Transferability of Awarded Lands. — Lands acquired by beneficiaries under this Act or other agrarian reform laws shall not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries through the DAR for a period of ten (10) years: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the BARC of the *barangay* where the land is situated. The PARCCOM, as herein provided, shall, in turn, be given due notice thereof by the BARC. …

"If the land has not yet been fully paid by the beneficiary, the rights to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself/herself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

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Award (CLOA) or Emancipation Patent (EP) before being allowed to transfer the land[282] is unduly prohibitive in the instant case. The prohibitive period under the CARL was meant to provide CARP beneficiaries sufficient time to profit from the awarded lands in order to sustain their daily living, pay off the yearly amortization, and earn modest savings for other needs. This period protected them from being influenced by dire necessity and short-sightedness and consequently, selling their awarded lands to a willing buyer (oftentimes the previous landowner) in exchange for quick money. This reasoning ordinarily may have been availing during the first few years of the CARL, but becomes an unreasonable obstruction for the qualified FWBs of Hacienda Luisita, who have been made to endure a null and void SDOA for more than 20 years.

Undeniably, some of the lands under compulsory coverage have become more viable for non-agricultural purposes, as seen from the converted lands of LIPCO and RCBC. In fact, the then Municipality of Tarlac had unanimously approved the Luisita Land Use Plan covering 3,290 hectares of agricultural lands in Hacienda Luisita, owned by, among others, petitioner HLI;[283]

"In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he/she has made on the land." (CARL, Sec. 27, as amended; emphasis supplied)

[282] "Lands awarded to ARBs under this Act may not be sold, transferred or conveyed except through hereditary succession or to the Government, or to the LBP, or to other qualified beneficiaries within a period of ten (10) years; Provided, however, that the children or the spouse of the transferor shall have a right to repurchase the land from the government or the LBP within a period of two (2) years from the date of transfer." (DAR Administrative Order No. 02-2009, Part F, 10.2)

[283] "The Sangguniang Bayan of Tarlac, Tarlac, hereby, approves the Luisita Land Use Plan submitted by the Luisita Realty Corporation covering the lands owned by Hacienda Luisita Inc., Central Azucarera de Tarlac, Tarlac Development Corporation, Luisita Golf and Country Club, Inc., Luisita Realty Corporation, [illegible] in the Luisita Industrial Park and others, covering over Three Thousand Two Hundred Ninety (3,290) hectares, as enumerated in the list of transfer certificates of titles, which list, including photocopies of the titles referred to in the list. Is hereto attached as Annex 'B', (hereinafter

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and reclassifying them for residential, commercial, industrial or institutional use.[284] The development of these kinds of land in Hacienda Luisita would better serve the local communities through the increase in economic activities in the area and the creation of more domestic employment.

Similarly, qualified FWBs should be afforded the same freedom to have the lands awarded to them transferred, disposed of, or sold, if found to have substantially greater economic value as reclassified lands. The proceeds from the sale of reclassified lands in a free, competitive market may give the qualified FWBs greater options to improve their lives. The funds sourced from the sale may open up greater and more diverse entrepreneurial opportunities for them as opposed to simply tying them to the awarded lands. Severely restricting the options available to them with respect to the use or disposition of the awarded lands will only prolong their bondage to the land instead of freeing them from economic want. Hence, in the interest of equity, the ten-year prohibitive period for the transfer of the Hacienda Luisita lands covered under the CARL shall be deemed to have been lifted, and nothing shall prevent qualified FWBs from negotiating the sale of the lands transferred to them.

The determination of the best feasible way to manage the lands is best left to the qualified FWBs themselves,[285] to be

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referred to as the 'Luisita lands'), which is hereby approved for integration/ inclusion in the general zoning map of the Municipality." (Sangguniang Bayan Resolution No. 280 dated 01 September 1995, Sec. 1; *rollo,* Vol. 3, at 3594-3595)

[284] "The Luisita Lands included in the Luisita Land Use Plan, whose present classification is agricultural, are **hereby reclassified to residential, commercial, industrial or institutional use**, as the case may be, in accordance with the Luisita Land Use Plan, as said Luisita Lands **have been found to have substantially greater economic value for residential, commercial, or industrial purposes**. Furthermore, the Luisita Lands included in the Luisita Land Use Plan, whose present classification, as per its tax declaration or other official government document, is non-agricultural, **is hereby confirmed as non-agricultural and shall remain as non-agricultural** in accordance with the Luisita Land Use Plan." (*Id.*, Sec. 2; emphasis supplied)

[285] "JUSTICE BERSAMIN: All right, the last question that I would like you to answer is this — is this land if it were to be distributed among your members

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assisted by public respondent DAR. Public respondent is now called upon to put into action its assurances to the Court that it is fully prepared to enforce compulsory coverage and to extend support to the FWBs to make an economic success of direct land distribution:

SECRETARY DELOS REYES:

… The government is prepared to extend support based on R.A. 9700. We are mandated to extend credit support to the farmer beneficiaries, not only in Hacienda Luisita, but also in the other areas that we are acquiring land. …

JUSTICE ABAD:

No, but we have to be realistic. I'm saying is that if we do this now, in this particular case, do you have enough support for the farmers? And can you guarantee that they will be able to farm their hectare land?

SECRETARY DELOS REYES:

Yes, Your Honor. …

JUSTICE ABAD:

So you believe that this can be done in Hacienda Luisita?

SECRETARY DELOS REYES:

Yes, Your Honor. …

JUSTICE ABAD:

You gave me comfort that if we annul this SDOA at least the government will answer for the result?

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included, among the farmers your members included, would you go back to sugar production or sugar cane production or planting?

ATTY. PAJILDA: It is a matter not yet discussed by the group but our contention Your Honor is that if the whole of the agricultural land of Luisita should be awarded to the farmworkers it should not be parcelized and given to them individually but it should be owned or under the control or management of the farmers cooperative where this cooperative will be the one to run the business of the organization, Your Honor.

JUSTICE BERSAMIN: So you would fall back on Section 29?

ATTY. PAJILDA: Yes, Your Honor." (TSN dated 24 August 2010, at 186-187)

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SECRETARY DELOS REYES:

Yes, Your Honor.[286]

JUSTICE SERENO:

… Because that is basically the option of land distribution is that the farmers must learn to be an entrepreneur. … Now to what extent are you prepared to create a program for this transformation of the farmer? As an entrepreneur of course you have outlined the steps, and then a farmer into a stockholder because if you are saying that there are about ten (10) or eleven (11) SDOs and many of them are being questioned, then we might find ourselves with a possibility that even this exception is not really viable under that concept. So is the DAR ready to try to give lessons in corporate citizenship in being a stockholder to his farmer beneficiaries?

SECRETARY DELOS REYES:

Yes, Your Honor, in the same way that we are prepared to transform the farmers into entrepreneurs. We are prepared to undertake the task.[287] (Emphasis supplied)

For indeed, agrarian reform is broader than just giving farmworkers land to till.[288] Rather, it is multi-dimensional in scope, and includes extending useful public services to increase agricultural productivity and to ensure independence and economic security for themselves and their families:[289]

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[286] TSN dated 24 August 2010, at 104-108.

[287] TSN dated 24 August 2010, at 120-121.

[288] "For many years, land reform has been considered an end in itself, a device to promote social justice. Today it is regarded not only as a tool of social justice but as a definite part of agricultural development. Land ownership gives Juan Cruz the pride of possession, but this is meaningless unless Cruz gets every kind of assistance to draw the most out of his plot. Mere landownership is like gold turned to sand. If land reform is indeed part of agricultural development, then increased and efficient production is its goal" (Mariano N. Querol, *LAND REFORM IN ASIA* [Solidaridad Publishing House 1974] at 25)

[289] "Agrarian reform involves both redistribution of landownership (land reform) and the development of complementary credit, extension, infrastructure, pricing, and research programs." (Riedinger, *supra* note 4, at 2)

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Agrarian Reform is in effect, quite a distinct thing, more complex and more profound, from this simple aspect of the distribution of land conceived of at times by an already decrepit revolutionism. Also, it is more than the convenience of giving up ownership of the land to the campensino so as to tie him to the soil and increase production, because he invests more, as some think. Agrarian reform is much more than this: It is based on the right of man who tills the soil that this shall be useful for his welfare and independence; so that the concept must include, in addition to the land problem itself, that of credit to enable him to work the soil and that of security of markets to make it truly productive.[290]

V.

Petitioners-in-intervention RCBC and LIPCO are innocent purchasers for value and subsequent events preclude the legal and physical impossibility of the return of the converted lands.

The lands in Hacienda Luisita that were converted into industrial lands and sold to petitioners-in-intervention can no longer be the subject of compulsory coverage, especially since these were transferred to innocent purchasers for value. In any event, compulsory coverage and transfer of the land is no longer feasible, considering the supervening events attendant in the instant case.

To begin with, the rules do not prohibit the sale or transfer of lands, which have already been converted into commercial or industrial lands. Under DAR Administrative Order No. 10-88, the minimum criteria for keeping the lands intact and unfragmented are limited to viable agricultural lands and with potential for growth and increased profitability.[291] Hence, the obligation of the corporate landowner under a stock distribution agreement was to prevent the malicious sale or transfer of agricultural lands to deprive stockholder-farmer-beneficiaries of their livelihood.

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[290] Lynn Smith Thomas, *AGRARIAN REFORM IN LATIN AMERICA* (1965), as cited in Milagros A. German, *THE AGRARIAN LAW IN THE NEW SOCIETY* (U. P. Law Center 1980) at 75-76.

[291] DAR Administrative Order No. 10-88. Sec. 5 (a).

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However, nothing prevents a landowner from applying for the conversion of agricultural lands into commercial or industrial lands that would eventually be transferred or sold to third parties, as provided for under CARL.[292] It is not denied that, at times, converting agricultural lands to other uses may be more economical or profitable, rather than maintaining them in their present nature. It would be folly to insist on maintaining agricultural lands that are no longer profitable in their present state and deprive the landowners of the business opportunity to maximize available resources. Landowners shall be free to transfer or sell agricultural lands converted into other uses, for as long as the applications for conversion comply with the guidelines set by law and duly approved by the DAR.[293] In the instant case, nothing prevented petitioner HLI from applying for the conversion of the 500 hectares of the reclassified agricultural lands into commercial and industrial lands and eventually transferring these to petitioners-in-intervention.

It will be recalled that the 500-hectare land was first reclassified from agricultural to commercial, industrial and residential purposes

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[292] "After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner with respect only to his/her retained area which is tenanted, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: Provided, That if the applicant is a beneficiary under agrarian laws and the land sought to be converted is the land awarded to him/her or any portion thereof, the applicant, after the conversion is granted, shall invest at least ten percent (10%) of the proceeds coming from the conversion in government securities: Provided, further, That the applicant upon conversion shall fully pay the price of the land: Provided, furthermore, That irrigated and irrigable lands, shall not be subject to conversion: Provided, finally, That the National Irrigation Administration shall submit a consolidated data on the location nationwide of all irrigable lands within one (1) year from the effectivity of this Act." (CARL, Sec. 65)

[293] Reclassified agricultural lands must undergo the process of conversion in the DAR before they may be used for other purposes. (*Ros v. DAR*, G.R. No. 132477, 31 August 2005, 468 SCRA 471; *DAR v. Polo Coconut Plantation, Co., Inc.*, G.R. Nos. 168787 and 169271, 03 September 2008, 564 SCRA 78)

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by the *Sangguniang Bayan* of Tarlac[294] in the general zoning map of the then Municipality of Tarlac. Thereafter, the DAR approved the application for conversion into industrial use.[295] Thus, when petitioner HLI partitioned and transferred the property to Luisita Realty, Inc. (200 hectares) and Centennary Holdings, (300 hectares), there was no impediment thereto.

Since the conversion of the 500-hectare reclassified lands in Hacienda Luisita was in compliance with the guidelines set by the law and duly approved by the DAR, then petitioners-in-intervention RCBC and LIPCO, as subsequent purchasers for fair value of a portion of the property and holders of titles thereto, cannot now be defeated in their rights.

An innocent purchaser for value and in good faith is one who "buys the property of another without notice that some other person has a right to or interest in the property and who pays the full and fair price for it at the time of the purchase, or before they get notice of some other persons' claim of interest in the property."[296] A person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need for inquiring further, except when the party has actual knowledge of the facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title of the vender or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.[297]

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[294] Sangguniang Bayan Resolution No. 280 dated 01 September 1995 (*rollo*, Vol. 3, at 3594-3595); Supervisory Group and AMBALA Comment/ Opposition dated 17 December 2006, par. 7.1, at 16 (*rollo*, Vol. 1, at 545); RCBC Petition-in-Intervention dated 18 October 2007, par. 5 at 13 (*rollo*, Vol. 2, at 1372).

[295] DARCO Conversion Order No. 030601074-764-(95), Series of 1996; *rollo*, Vol. 1, at 651-664.

[296] *Coastal Pacific Trading, Inc., v. Southern Rolling Mills, Co., Inc.*, G.R. No. 118692, 28 July 2006, 497 SCRA 11.

[297] *Rufloe v. Burgos*, G. R.No. 143573, 30 January 2009, 577 SCRA 264.

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In *Vencilao v. Court of Appeals,* the Court explained:

> As a general rule, where the certificate of title is in the name of the vendor when the land is sold, the vendee for value has the right to rely on what appears on the face of the title. He is under no obligation to look beyond the certificate and investigate the title of the vendor appearing on the face of the certificate. By way of exception, the vendee is required to make the necessary inquiries if there is anything in the certificate of title which indicates any cloud or vice in the ownership of the property. Otherwise, his mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.[298]

At the time petitioners-in-intervention bought the converted properties, there was nothing in the titles thereto that would alert them to any claim or defect.

The 500-hectare converted land was partitioned and transferred to Luisita Realty, Inc., and Centennary Holdings. Luisita Realty paid petitioner HLI the amount of ₱500,000,000 for the 200-hectare land, and two titles covering 100 hectares each were issued in the former's name. Meanwhile, Centennary Holdings received the 300-hectare land in exchange for the issuance of 12,000,000 shares of stock in favor of petitioner HLI, a title to which was likewise issued. The same 300-hectare land was eventually sold to petitioner-in-intervention LIPCO for ₱750,000,000, and title was transferred to it. When petitioner-in-intervention LIPCO failed to pay its loan from petitioner-in-intervention RCBC, it entered into a *dacion en pago* agreement with RCBC, wherein portions of the 300-hectare land were transferred in exchange for writing off the loan then amounting to ₱431,695,732.10. Both LIPCO and RCBC were issued separate titles over the same 300-hectare converted land.

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[298] G.R. No. 123713, 01 April 1998, 288 SCRA 574.

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Prior to acquiring the property Centennary Holdings, the only restrictions appearing in the title of the 300-hectare property were the Secretary's Certificate in favor of Teresita Lopa and Shintaro Murai.[299] After LIPCO purchased the property and before a portion was transferred to petitioner-in-intervention RCBC through the *dacion en pago*, the only restrictions appearing on the face of LIPCO's title[300] to the property were the following: (1) Deed of Restrictions; (2) Secretary's Certificate in favor of Koji Komai and Kyosuke Nori; and (3) the Real Estate Mortgage in favor of RCBC for ₱300,000,000. Hence, there was nothing in the titles to the properties that would have alerted petitioners-in-intervention of any defect at the time these properties were sold to them. No adverse claim or pending litigation was annotated in the title that would defeat or supersede the claims of petitioners-in-intervention as purchasers of the property.

In fact, the Deed of Restrictions in LIPCO's title specifically constrained the use and occupancy of the property "solely as an industrial estate for non-polluting, general, industrial and manufacturing activities," and required prior written consent of petitioner HLI before the property could be used as a "vegetable/fruit plantation."[301] Thus, LIPCO and RCBC had no inkling that the 300-hectare property would be used for anything but for industrial and manufacturing activities. The actions of both LIPCO and RCBC in dealing with the property were in conformity with the use and purpose of the land as an industrial estate. They had every reason to believe in good faith that the property was available for industrial purposes and free from any defect with respect to CARP coverage.

That the property was previously agricultural land that was subject to conversion is not sufficient notice to deny the rights of petitioners-in-intervention as innocent purchasers for value. At the time LIPCO purchased the property for purposes of establishing an industrial estate on 30 July 1998, the land had

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[299] TCT No. 292091, *rollo,* Vol. 2, at 1492-1493.

[300] TCT No. 310985, *rollo,* Vol. 2, at 1514-1518.

[301] TCT No. 310985, *id.*, at 1515.

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already been converted from an agricultural into industrial land, with the imprimatur of the DAR no less. If at all, the DAR's conversion order was precisely what assured LIPCO that the property was approved for sale and not subject to CARP coverage. In fact, private respondents' petitions were filed after the 300-hectare property had already been converted and transferred by petitioner HLI to Centennary Holdings and thereafter sold to LIPCO.

That the land was covered by a reclassification ordinance of the local government and by the DAR Conversion Order only bolstered their good faith belief in the validity of the sellers' titles to the property. In addition, the Housing and Land Use Regulatory Board (HLURB) even registered the 300-hectare land of LIPCO and granted the owner thereof the license to sell the land.[302]

Neither can it be denied that a full and fair consideration was given in exchange for the said lands. LIPCO paid the total amount of ₱750,000,000 to Centennary Holdings in exchange for the 300-hectare land;[303] while RCBC wrote off a portion of LIPCO's debt amounting to ₱431,695,732.10 when it received the two titles to the subdivided 300-hectare lands.[304]

With respect to petitioner-in-intervention RCBC, the Court has previously exacted more than just ordinary diligence from banks and other financial institutions in the conduct of their financial dealings with real properties. The standard required of banks and other financial institutions, however, does not deprive them of the protections afforded innocent purchasers for value, once they have shown that they have exercised the level of diligence required. Thus, the Court ruled:

While we agree with petitioners that GSIS, as a financial institution, is bound to exercise more than just ordinary diligence in the conduct

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[302] HLURB Certificate of Registration No. 00794 and HLURB License to Sell No. 00776 both dated 26 December 1997; *rollo*, Vol. 3, at 4399-4400.

[303] *Rollo*, Vol. 2, at 1499-1513.

[304] *Rollo*, Vol. 2, at 1523-1527.

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of its financial dealings, we nevertheless find no law or jurisprudence supporting petitioners' claim that financial institutions are not protected when they are innocent purchasers for value. When financial institutions exercise extraordinary diligence in determining the validity of the certificates of title to properties being sold or mortgaged to them and still fail to find any defect or encumbrance upon the subject properties after said inquiry, such financial institutions should be protected like any other innocent purchaser for value if they paid a full and fair price at the time of the purchase or before having notice of some other person's claim on or interest in the property.[305]

In the instant case, petitioner-in-intervention RCBC has displayed an observance of extraordinary degree of diligence in acquiring the property from LIPCO. Petitioner-in-intervention conducted ocular inspections and investigations of the properties to be the subjected to *dacion en pago*, in accordance with its credit policies. It likewise confirmed that LIPCO had possession over the lands, and that there was no other possessor or occupant thereof. It even confirmed the ownership and possession of LIPCO, with the residents in the vicinity endorsing the latter's plans to create an industrial estate.[306]

To allow the converted land to be included in the compulsory coverage of the CARL would not only overturn the finality of the conversion order properly issued by the DAR, but also deprive petitioners-in-intervention of property without due process of law.

In *Spouses Villorente v. Aplaya Laiya Corporation*, the Court in no uncertain terms upheld the finality of a conversion order:

Indubitably, the Conversion Order of the DAR was a final order, because it resolved the issue of whether the subject property may be converted to non-agricultural use. The finality of such Conversion Order is not dependent upon the subsequent determination, either by agreement of the parties or by the DAR, of the compensation due to the tenants/occupants of the property caused by its conversion

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[305] *Ty v. Queen's Row Subdivision*, G.R. No. 173158, 04 December 2009, 607 SCRA 324.

[306] *Rollo*, Vol. 3, at 4357-4362.

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to non-agricultural use. Once final and executory, the Conversion Order can no longer be questioned.[307]

In this case, the DAR's conversion order has already attained finality and can no longer be questioned, especially by a collateral attack on the SDOA that includes the converted lands. Not only has the conversion order been issued in accordance with law and the rules, it has also been executed with the subsequent transfers of titles to the lands to the present owners, Luisita Realty, Inc., LIPCO and RCBC. To reverse the final conversion order through the nullification of the SDOA would work injustice to LIPCO and RCBC, who were not even parties to the PARC proceedings below. Moreover, the indefeasibility of titles under the Torrens system[308] would be put in peril, if the questioned PARC Resolution would be allowed to nullify a claim of ownership through a collateral proceeding. Especially in this case, LIPCO and RCBC were not notified of the proceedings below nor did they participate therein. Yet, their registered titles would be impugned by an indirect attack.[309] The time is ripe for this Court to settle lingering doubts as to the finality of conversion orders of the DAR, in order to secure the rights and benefits to which farmworkers are entitled and to shore up investor's confidence in the reliability of titles to the converted lands that they have obtained and developed.[310]

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[307] G.R. No. 145013, 31 March 2005, 454 SCRA 493.

[308] "[A] Torrens title is evidence of indefeasible title to property in favor of the person in whose name the title appears. It is conclusive evidence with respect to the ownership of the land described therein." (*Vda. de Aguilar, v. Spouses Alfaro,* G.R. No. 164402, 05 July 2010, citing *Baloloy v. Hular*, 481 Phil. 398, 410 [2004], and *Carvajal v. Court of Appeals,* 345 Phil. 582, 594 [1997])

[309] "Indeed, a certificate of title, once registered, should not thereafter be impugned, altered, changed, modified, enlarged or diminished, except in a direct proceeding permitted by law. Otherwise, reliance on registered titles would be lost." (*Ugale v. Gorospe*, G.R. No. 149516, 11 September 2006, 501 SCRA 376)

[310] "What the Philippine government must do is to clarify existing rules and regulations concerning land use and land conversions in order to avoid

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Nevertheless, the Court notes that Luisita Realty, which received the 200-hectare portion of converted land from petitioner HLI, failed to intervene in the instant case. Despite the notice of coverage issued under the questioned PARC resolution which included the converted lands it purchased, Luisita Realty did not seek to defend its claims of ownership in the instant case, unlike petitioners-in-intervention LIPCO and RCBC. Although the right to due process disallows decisions of the court to bind those who are not parties to the case,[311] it is deemed to have waived its right to be heard. Furthermore, Luisita Realty derives its right of ownership over the converted land from petitioner HLI, who is a party to the instant case. If petitioner HLI's ownership of the 200-hectare converted land is assailed, Luisita Realty cannot claim a greater right than that of its predecessor. Since all of petitioner HLI's agricultural lands in Hacienda Luisita are now subject to direct land transfer, those transferred by petitioner HLI to Luisita Realty are necessarily covered. Unlike petitioners-in-intervention LIPCO and RCBC, who timely raised and defended their claims as innocent purchasers for value before the Court, Luisita Realty kept its silence and did not bother to establish its rights over the converted lands in the proceedings before the Court. Absent any proof of Luisita Realty's status as an innocent purchaser for value, the 200-hectare converted lands it received from petitioner HLI shall likewise be subject to direct land transfer, without prejudice to its right to claim just compensation under the law and the rules.

In any case, the supervening events have further established that the areas so converted are no longer economically feasible

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disputes that have the potential of encouraging domestic unrest and discoursing foreign investment particularly in industrial and real estate development. Foreign investors need to know that the land they acquire for development will not be subject to later disputes, while farmer-beneficiaries need to be sure that they still obtain the land they are entitled to under the CARP." (Janeth San Pedro, Agrarian Reform's Constraint on Land Acquisition and Development for Non-Agricultural Use in the Philippines, 12 TRANSNAT'L LAW. 319 [1999] at 351)

[311] *Laguinilla v. Velasco,* G.R. No. 169276, 16 June 2009, 589 SCRA 224, citing *Aron v. Realon*, G.R. No. 159156, January 31, 2005, 450 SCRA 372, 389.

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and sound for agricultural purposes. The subsequent development of and partial improvements[312] on the converted lands of petitioners-in-intervention RCBC and LIPCO only affirm their viability and feasibility for industrial and commercial purposes, and not for agricultural use.

That these converted lands were declared as a Special Economic Zone by then President Ramos (Luisita Industrial Park II) only emphasizes the desirability and economy of using them as industrial lands. Before they may be used for other purposes, reclassified agricultural lands must undergo the process of conversion;[313] the DAR's approval of the conversion of agricultural land into an industrial estate is a condition precedent for its conversion into an ecozone.[314] A proposed ecozone cannot be considered for presidential proclamation, unless the landowner first submits to PEZA a land-use conversion clearance certificate from the DAR.[315]

Prior to the President's approval of the Luisita Industrial Park II as a special economic zone on 22 April 1998,[316] the DAR had already approved the conversion of the land to an

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[312] Petitioner-in-intervention RCBC has claimed that the property has been partially developed into an industrial estate with a main road fully paved with proper drainage and equipped with a power control house, deep well and water tanks, drainage reservoir and STP, concrete perimeter security fence, and security gate house. (Petitioner-in-intervention RCBC's Memorandum dated 23 September 2010, at 85) On the other hand, petitioner-in-intervention LIPCO claims 62% completion of its 115.779 hectare property, where concrete roads, a power control house, an elevated water tank, two main gates, a drainage reservoir with a release gate, a drying tower, and an aceration tank is already put in place. (Petitioner-in-intervention LIPCO's Memorandum dated 23 September 2010, at 41)

[313] *Ros v. DAR*, G.R. No. 132477, 31 August 2005, 468 SCRA 471.

[314] *DAR v. Polo Coconut Plantation, Co., Inc.*, G.R. Nos. 168787 and 169271, 03 September 2008, 564 SCRA 78, citing Republic Act No. 7916, Sec. 5 and DAR Administrative Order No. 1, s. 1999, Sec. 6(e).

[315] *DAR v. Polo Coconut Plantation, Co., Inc., id.*, citing Rules and Regulation to Implement R.A. 7916. Part III, Rule IV, Sec. 3.

[316] Presidential Proclamation No. 1207 dated 22 April 1998; *rollo*, Vol. 3, at 3400-3402.

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industrial zone on 14 August 1996.[317] It can be deduced that the presidential proclamation of the converted land as a special economic zone was a logical progression arising from the earlier intention to use the land for industrial purposes. This intention was the reason why the DAR allowed the conversion in the first place. Thus, agricultural land that has been approved for conversion by the DAR for commercial or industrial purposes, **and** subsequently proclaimed as a special economic zone by the President, can no longer be subject to coverage under the CARP.

To order that these lands now revert to agricultural use for the planting of sugar would be more costly and disadvantageous, since it involves undoing these improvements and rehabilitating the land to become viable for planting. If the DAR were to order the expropriation of the 300-hectare converted lands, then payment of just compensation must be made to petitioners-in-intervention as lawful and titled owners at the time of the taking. Such a scenario will not bode well for the cash-strapped agrarian reform program, since the present market value of the lands has vastly increased due to the partial improvements and developments introduced therein. Petitioner-in-intervention LIPCO even claims to have paid US$14,782,956.30 for the civil works and power supply system built on the converted land by its contractor, Hazama Philippines, Inc.[318] Worse, additional resources would be needed to remove these improvements and rehabilitate the industrial estate for agricultural farming. As found by the DAR, the converted lands were not irrigated and were in need of new irrigation facilities to make them viable for agriculture.[319]

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[317] DARCO Conversion Order No. 030601074-764-(95), Series of 1996; *rollo*, Vol. 1, at 651-664.

[318] Petitioner-in-Intervention LIPCO's Memorandum dated 23 September 2010, par. 73.1, at 41.

[319] "4. Accordingly, thought the subject area is included in the NIA service are, the HLI has been using the NIA irrigation facilities because of the complaint of the farmworkers downstream (outside the HLI) that they are not getting enough water, if HLI tapped it. To make matters worse, the eruption of Mt. Pinatubo has caused the lahar siltation to close the O'Donnel River which is

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Be that as it may, the Court should not, however, turn a blind eye to the fact that the proper recipients of the purchase price for the transferred and converted lands are the FWBs, under the compulsory coverage scenario. Had the qualified FWBs opted for direct land transfer of the entire Hacienda Luisita lands, then Centennary Holdings, LIPCO and RCBC would have all been dealing directly with them for the transfer and purchase of the 300-hectare lands. Instead, the stock distribution option placed the proceeds of the sale of these converted lands unto the hands of petitioner HLI as the corporate landowner. Considering that the land is to be redistributed to the qualified FWBs, and that the 300-hectare converted lands are no longer feasible as agricultural lands, it is to the best interest of justice and equity that petitioner HLI should return the amounts received from the sale and/or transfer of the converted lands, net of the taxes and other legitimate expenses actually incurred in the sale of the land. This is without prejudice to the reasonable offset of the amounts owed by the qualified FWBs to petitioner HLI from the benefits they received as stockholders under the SDOA.

FINAL NOTE

It is not denied that TADECO and petitioner HLI have attempted to give life to the pronouncement of agrarian reform through the distribution of shares of stock to the FWBs.[320] Sadly, the mechanism they resorted to was fatally flawed and unjust in its implementation. Simply put, the SDOA has failed as an alternative to land redistribution scheme in empowering the landless farmworkers of Hacienda Luisita. An agrarian system that perpetuates excessive dependence on the few landed by the

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the main source of the irrigation water of Tarlac. Without other source to its irrigation water requirement, the HLI heavily depends on ground water pumping at 50 feet deep." (DAR Conversion Order No. 0306017074-764-(95), s. of 1996, at 6-7; *rollo*, Vol. 2, at 1474-75)

[320] "This Agreement is entered into by the parties herein in the spirit of the Comprehensive Agrarian Reform Program (C.A.R.P.) of the government and with the supervision of the Department of Agrarian Reform, **with the end in view of improving the lot of the qualified beneficiaries of the stock distribution plan and obtaining for them greater benefits**." (SDOA dated 11 May 1989, at 4; *rollo*, Vol. 1, at 150; emphasis supplied)

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many landless carries within itself the seed of its own disintegration.[321]

I vote to affirm the PARC's present resort to compulsory coverage of the agricultural lands, which is required under CARL in order to uphold the constitutional goal of land redistribution. Agrarian reform was aimed at placing the poor farmers on a parity with the landowner. As an alternative to direct land distribution, the stock distribution option under CARL was intended to hand control of the lands indirectly to the farmer by designating them as stockholders of the corporate landowner. However, instead of ensuring their freedom with the promise of corporate control, the petitioner HLI's SDOA made them subservient and minority stockholders, who continue to be beholden to the good graces of the majority corporate landowner.

Under the SDOA, qualified FWBs were awarded "intangible paper" assets that became worthless, as the fortunes of petitioner HLI went south, instead of receiving "real and income-generating" assets, which offered a multitude of possibilities for their use. Despite the good intention of coming up with an alternative option under the agrarian land reform program, the failure of the SDOA to fulfill the promises of agrarian social justice in Hacienda Luisita leaves no other legal option than to order the unconditional and complete transfer of the agricultural lands to the qualified FWBs, not in the next generation, but now. In ordering the immediate redistribution of the Hacienda Luisita agricultural lands, what is sought is the reinvigoration of the constitutional mandate for agrarian reform and the empowerment of the farmworker-beneficiaries by giving them the means to determine their own destiny.[322]

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[321] Jesus M. Montemayor, The Economic, Social and Political Rationale of Agrarian Reform, AGRARIAN REFORM LAND LAW (UP Law Center, 1975), at 210.

[322] "Mr. President, no one will argue with the productive potential inherent in people who own the land they till. To own land is to hold one's destiny in his own hands. This is why rural development must be anchored on land reform." (Sen. Heherson Alvarez, Sponsorship Speech of the CARL in Rufus B. Rodriguez, COMPREHENSIVE AGRARIAN REFORM LAW ANNOTATED [2004] at 175)

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DISPOSITIVE PORTION

IN VIEW OF THE FOREGOING, I vote to **AFFIRM WITH MODIFICATIONS** PARC Resolution No. 2005-32-01 dated 22 December 2005 and Resolution No. 2006-34-01 dated 03 May 2006. I dissent from the majority's position with respect to how they modified the questioned PARC Resolutions. I would direct the modifications of the PARC Resolutions in the following manner.

The agricultural lands of TADECO and petitioner HLI are hereby ordered to be subject to compulsory coverage by the DAR. The previous approval of the SDOA is hereby **REVOKED**, and the parties thereto are hereby ordered restored to their previous states, subject to the following conditions:

1. Agricultural lands covered by CARL and previously held by TADECO, including those transferred to petitioner HLI, shall be subject to compulsory coverage and immediately distributed to the 6,296 original qualified FWBs who signed the SDOA or, if deceased, their heirs, subject to the disposition of the converted lands expressed in the paragraph after the next, but shall necessarily exclude only the following:

   a. 300 out of the 500 hectares of converted lands, now in the name of LIPCO and RCBC;

   b. 80-hectares of SCTEX lands; and

   c. homelots already awarded to the qualified FWBs.

2. Petitioner HLI and Luisita Realty, Inc., shall be entitled to the payment of just compensation for the agricultural lands and the 200-hectare converted lands, respectively, at the time of the actual taking at fair market value, which shall be determined by the DAR; petitioner HLI shall not be held liable for the payment of rentals for the use of the property.

3. All shares of stock of petitioner HLI issued to the qualified FWBs, as beneficiaries of the direct land transfer, are nullified; and all such shares are restored to the name of TADECO, insofar as it transferred assets and liabilities to petitioner HLI, as the spin-off corporation; but the shares issued to non-qualified FWBs

shall be considered as additional and variable employee benefits and shall remain in their names.

4. Petitioner HLI shall have no claim over all salaries, wages and benefits given to farmworkers; and neither shall the farmworkers, qualified or not, be required to return the same, having received them for services rendered in an employer-employee relationship.

5. Petitioner HLI shall be liable to the qualified FWBs for the value received for the sale or transfer of the 300 out of the 500 hectares of converted lands, specifically the equivalent value of 12,000,000 shares of Centennary Holdings; for the 300-hectare land assigned, but not less than ₱750,000,000; and the money received from the sale of the SCTEX land, less taxes and other legitimate expenses normally associated with the sale of land.

6. Petitioner HLI's liability shall be offset by payments actually received by qualified FWBs under the SDOA, namely:

a. Three percent (3%) total gross sales from the production of the agricultural lands;[323]

b. homelots awarded to qualified FWBs;

c. any dividend given to qualified FWBs; and

d. proceeds of the sale of the 300-hectare converted land and SCTEX land, if any, distributed to the FWBs.[324]

The DAR is **DIRECTED** to determine the scope of TADECO's and/or petitioner HLI's agricultural lands that should have been included under the compulsory coverage of CARL at the time

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[323] Based on its own records, petitioner HLI distributed the 3% production share to qualified FWBs amounting to ₱151,386,000 from 1989-2005. (Report on Salaries, Benefits and Credit Privileges; *rollo*, Vol. 3, at 3759-3761)

[324] Private respondents Supervisory Group and AMBALA admit that ₱37,500.000 was distributed to the FWBs as part of the sales of the proceeds of the converted 500 hectare lands. (Memorandum dated 25 November 2005 filed in the PARC, par. 46, at 19 [*rollo*, Vol. 1, at 728]; see also petitioner HLI's Motion for Reconsideration dated 02 January 2006, at 20 [*rollo*, Vol. 1, at 752])

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the SDOA was executed on 11 May 1989, but excluding the lands mentioned above. The lands of TADECO not covered by the SDOA should be covered by this ruling, after appropriate determination by DAR, considering that they were covered by CARL but operationally excluded therefrom when TADECO unilaterally assigned to the spin-off HLI only 4,916 hectares of the 6,443 hectares it owned. The DAR is also **ORDERED** to monitor the land distribution and extend support services that the qualified farmworker-beneficiaries may need in choosing the most appropriate and economically viable option for land distribution, and is further **REQUIRED** to render a compliance report on this matter one-hundred eighty (180) days after receipt of this Order. The compliance report shall include a determination of the exact land area of Hacienda Luisita that shall be subject to compulsory coverage in accordance with the Decision.

Petitioner HLI is **REQUIRED** to render a complete accounting and submit evidentiary proof of all the benefits given and extended to the qualified FWBs under the void SDOA — including but not limited to the dividends received, homelots awarded, and proceeds of the sales of the lands, which shall serve as bases for the offset of its liabilities to the qualified FWBs — and its accounting shall be subject to confirmation and verification by the DAR.

All titles issued over the 300-hectare converted land, including those under the names of petitioners-in-intervention Rizal Commercial Banking Corporation and Luisita Industrial Park Corporations and those awarded as homelots are hereby **AFFIRMED** and **EXCLUDED** from the notice of compulsory coverage. The 200-hectare converted lands transferred to Luisita Realty, Inc., by petitioner Hacienda Luisita, Inc., is deemed covered by the direct land transfer under the CARP in favor of the qualified FWBs, subject to the payment of just compensation.

The Temporary Restraining Order issued on 14 June 2006, enjoining the implementation of the questioned PARC Resolution and Notices of Coverage, is hereby **LIFTED**.