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[G.R. No. 171101. November 22, 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. POLITICAL LAW; STATUTES; CONSTITUTIONALITY OF; OPERATIVE FACT DOCTRINE; NOT LIMITED TO LAWS SUBSEQUENTLY DECLARED UNCONSTITUTIONAL OR INVALID BUT APPLIES ALSO TO EXECUTIVE ACTS SUBSEQUENTLY DECLARED INVALID; APPLIED.— Contrary to the stance of respondents, the operative fact doctrine does not only apply to laws subsequently declared unconstitutional or unlawful, as it also applies to executive acts subsequently declared as invalid. As We have discussed in Our July 5, 2011 Decision: x x x. The applicability of the operative fact doctrine to executive acts was further explicated by this Court in *Rieta v. People*, thus: 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.'" x x x. Bearing in mind that PARC Resolution No. 89-12-2 —an

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

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executive act—was declared invalid in the instant case, the operative fact doctrine is clearly applicable.

2. ID.; ID.; ID.; ID.; NOT CONFINED TO STATUTES AND RULES AND REGULATIONS ISSUED BY THE EXECUTIVE DEPARTMENT THAT ARE ACCORDED THE SAME STATUS AS THAT OF A STATUTE OR THOSE WHICH ARE QUASI-LEGISLATIVE IN NATURE; TERM "EXECUTIVE ACT," CONSTRUED.— [N]either the *De Agbayani* case nor the *Municipality of Malabang* case elaborates what "executive act" mean. Moreover, while orders, rules and regulations issued by the President or the executive branch have fixed definitions and meaning in the Administrative Code and jurisprudence, the phrase "executive act" does not have such specific definition under existing laws. It should be noted that in the cases cited by the minority, nowhere can it be found that the term "executive act" is confined to the foregoing. Contrarily, the term "executive act" is broad enough to encompass decisions of administrative bodies and agencies under the executive department which are subsequently revoked by the agency in question or nullified by the Court. xxx In *Tan v. Barrios*, this Court, in applying the operative fact doctrine, held that despite the invalidity of the jurisdiction of the military courts over civilians, certain operative facts must be acknowledged to have existed so as not to trample upon the rights of the accused therein. Relevant thereto, in *Olaguer v. Military Commission No. 34*, it was ruled that "military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of the executive power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing discipline therein, and utilized under his orders or those of his authorized military representatives." Evidently, the operative fact doctrine is not confined to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature.

3. ID.; ID.; ID.; ID.; THE COURT CAN APPLY THE OPERATIVE FACT DOCTRINE TO ACTS AND CONSEQUENCES THAT RESULTED FROM THE RELIANCE NOT ONLY ON A LAW OR EXECUTIVE ACT WHICH IS QUASI-LEGISLATIVE IN NATURE BUT ALSO ON DECISIONS

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OR ORDERS OF THE EXECUTIVE BRANCH WHICH WERE LATER NULLIFIED.— Even assuming that *De Agbayani* initially applied the operative fact doctrine only to executive issuances like orders and rules and regulations, said principle can nonetheless be applied, by analogy, to decisions made by the President or the agencies under the executive department. This doctrine, in the interest of justice and equity, can be applied liberally and in a broad sense to encompass said decisions of the executive branch. In keeping with the demands of equity, the Court can apply the operative fact doctrine to acts and consequences that resulted from the reliance not only on a law or executive act which is quasi-legislative in nature but also on decisions or orders of the executive branch which were later nullified. This Court is not unmindful that such acts and consequences must be recognized in the higher interest of justice, equity and fairness. Significantly, a decision made by the President or the administrative agencies has to be complied with because it has the force and effect of law, springing from the powers of the President under the Constitution and existing laws. Prior to the nullification or recall of said decision, it may have produced acts and consequences in conformity to and in reliance of said decision, which must be respected. It is on this score that the operative fact doctrine should be applied to acts and consequences that resulted from the implementation of the PARC Resolution approving the SDP of HLI.

4. ID.; ID.; ID.; ID.; THE APPLICATION OF THE OPERATIVE FACT DOCTRINE TO THE QUALIFIED FARMWORKER-BENEFICIARIES (FWBs) IS NOT INIQUITOUS AND PREJUDICIAL TO THEIR INTERESTS BUT IS ACTUALLY BENEFICIAL AND FAIR TO THEM.— The application of the operative fact doctrine to the FWBs is not iniquitous and prejudicial to their interests but is actually beneficial and fair to them. *First*, they are granted the right to remain in HLI as stockholders and they acquired said shares without paying their value to the corporation. On the other hand, the qualified FWBs are required to pay the value of the land to the Land Bank of the Philippines (LBP) if land is awarded to them by DAR pursuant to RA 6657. If the qualified FWBs really want agricultural land, then they can simply say no to the option. And *second*, if the operative fact doctrine is not applied to

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them, then the FWBs will be required to return to HLI the 3% production share, the 3% share in the proceeds of the sale of the 500-hectare converted land, and the 80.51-hectare Subic-Clark-Tarlac Expressway (SCTEX) lot, the homelots and other benefits received by the FWBs from HLI. With the application of the operative fact doctrine, said benefits, homelots and the 3% production share and 3% share from the sale of the 500-hectare and SCTEX lots shall be respected with no obligation to refund or return them. The receipt of these things is an operative fact "that can no longer be disturbed or simply ignored."

5. ID.; ID.; ID.; ID.; A RULE OF EQUITY.— Undeniably, the operative fact doctrine is a rule of equity. As a complement of legal jurisdiction, equity "seeks to reach and complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so. Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts." Remarkably, it is applied only in the absence of statutory law and never in contravention of said law.

6. ID.; ID.; STATUTORY CONSTRUCTION; LAST PARAGRAPH OF SECTION 31 OF THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); CONSTRUED.— [T]he last paragraph of Sec. 31 of RA 6657 states: 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. Markedly, the use of the word **"or"** under the last paragraph of Sec. 31 of RA 6657 connotes that the law gives the corporate landowner an "option" to avail of the stock distribution option or to have the SDP approved within two (2) years from the approval of RA 6657. This interpretation is consistent with the well-established principle in statutory construction that "[t]he word or is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word."

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7. ID.; ID.; ID.; ID.; NOT A BAR FROM APPLYING THE OPERATIVE FACT DOCTRINE.— Given that HLI secured approval of its SDP in November 1989, well within the two-year period reckoned from June 1988 when RA 6657 took effect, then HLI did not violate the last paragraph of Sec. 31 of RA 6657. Pertinently, said provision does not bar Us from applying the operative fact doctrine. Besides, it should be recognized that this Court, in its July 5, 2011 Decision, affirmed the revocation of Resolution No. 89-12-2 and ruled for the compulsory coverage of the agricultural lands of Hacienda Luisita in view of HLI's violation of the SDP and DAO 10. By applying the operative fact doctrine, this Court merely gave the qualified FWBs the option to remain as stockholders of HLI and ruled that they will retain the homelots and other benefits which they received from HLI by virtue of the SDP. It bears stressing that the application of the operative fact doctrine by the Court in its July 5, 2011 Decision is favorable to the FWBs because not only were the FWBs allowed to retain the benefits and homelots they received under the stock distribution scheme, they were also given the option to choose for themselves whether they want to remain as stockholders of HLI or not. This is in recognition of the fact that despite the claims of certain farmer groups that they represent the qualified FWBs in Hacienda Luisita, none of them can show that they are duly authorized to speak on their behalf.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RESTRICTED TO RESOLVING ERRORS OF JURISDICTION AND GRAVE ABUSE OF DISCRETION, AND NOT ERRORS OF JUDGMENT.— FARM argues that this Court ignored certain material facts when it limited the maximum area to be covered to 4,915.75 hectares, whereas the area that should, at the least, be covered is 6,443 hectares, which is the agricultural land allegedly covered by RA 6657 and previously held by Tarlac Development Corporation (Tadeco). We cannot subscribe to this view. Since what is put in issue before the Court is the propriety of the revocation of the SDP, which only involves 4,915.75 has. of agricultural land and not 6,443 has., then We are constrained to rule only as regards the 4,915.75 has. of agricultural land. Moreover, as admitted by FARM itself, this issue was raised for the first time by FARM in its Memorandum dated September 24, 2010

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filed before this Court. In this regard, it should be noted that "[a]s a legal recourse, the special civil action of *certiorari* is a limited form of review." The *certiorari* jurisdiction of this Court is narrow in scope as it is restricted to resolving errors of jurisdiction and grave abuse of discretion, and not errors of judgment. To allow additional issues at this stage of the proceedings is violative of fair play, justice and due process.

9. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); MATTERS INVOLVING STRICTLY THE ADMINISTRATIVE IMPLEMENTATION AND ENFORCEMENT OF AGRARIAN REFORM LAWS ARE WITHIN THE JURISDICTION OF THE DEPARTMENT OF AGRARIAN REFORM (DAR).— Nonetheless, it should be taken into account that this should not prevent the DAR, under its mandate under the agrarian reform law, from subsequently subjecting to agrarian reform other agricultural lands originally held by Tadeco that were allegedly not transferred to HLI but were supposedly covered by RA 6657. x x x. In order to ensure the proper distribution of the agricultural lands of Hacienda Luisita per qualified FWB, and considering that matters involving strictly the administrative implementation and enforcement of agrarian reform laws are within the jurisdiction of the DAR, it is the latter which shall determine the area with which each qualified FWB will be awarded.

10. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCIES ARE CONCLUSIVE AND BINDING ON THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS.— [T]he allegation that the converted lands remain undeveloped is contradicted by the evidence on record, particularly, Annex "X" of LIPCO's Memorandum dated September 23, 2010, which has photographs showing that the land has been partly developed. Certainly, it is a general rule that the factual findings of administrative agencies are conclusive and binding on the Court when supported by substantial evidence. However, this rule admits of certain exceptions, one of which is when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

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11. COMMERCIAL LAW; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; ABSENT ANY ALLEGATION OR PROOF OF FRAUD OR OTHER PUBLIC POLICY CONSIDERATIONS, THE EXISTENCE OF INTERLOCKING DIRECTORS, OFFICERS AND STOCKHOLDERS IS NOT ENOUGH JUSTIFICATION TO PIERCE THE VEIL OF CORPORATE FICTION.— [B]y arguing that the companies involved in the transfers of the 300-hectare portion of Hacienda Luisita have interlocking directors and, thus, knowledge of one may already be imputed upon all the other companies, AMBALA and Rene Galang, in effect, want this Court to pierce the veil of corporate fiction. However, piercing the veil of corporate fiction is warranted "only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one." x x x. Absent any allegation or proof of fraud or other public policy considerations, the existence of interlocking directors, officers and stockholders is not enough justification to pierce the veil of corporate fiction as in the instant case.

12. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); ONCE FINAL AND EXECUTORY, THE CONVERSION ORDER CAN NO LONGER BE QUESTIONED.— A view has also been advanced that the 200-hectare lot transferred to Luisita Realty Corporation (LRC) should be included in the compulsory coverage because the corporation did not intervene. We disagree. Since the 200-hectare lot formed part of the SDP that was nullified by PARC Resolution 2005-32-01, this Court is constrained to make a ruling on the rights of LRC over the said lot. Moreover, the 500-hectare portion of Hacienda Luisita, of which the 200-hectare portion sold to LRC and the 300-hectare portion subsequently acquired by LIPCO and RCBC were part of, was already the subject of the August 14, 1996 DAR Conversion Order. By virtue of the said conversion order, the land was already reclassified as industrial/commercial land not subject to compulsory coverage. Thus, if We place the 200-hectare lot sold to LRC under compulsory coverage, this Court would, in effect, be disregarding the DAR Conversion Order, which has long attained its finality. And as this Court held in *Berboso*

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v. CA, "Once final and executory, the Conversion Order can no longer be questioned." Besides, to disregard the Conversion Order through the revocation of the approval of the SDP would create undue prejudice to LRC, which is not even a party to the proceedings below, and would be tantamount to deprivation of property without due process of law.

13. ID.; ID.; THE RIGHTS, OBLIGATIONS AND REMEDIES OF THE PARTIES TO THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA) EMBODYING THE STOCK DISTRIBUTION PLAN (SDP) ARE PRIMARILY GOVERNED BY RA 6657 AND PETITIONER HACIENDA LUISITA, INC. (HLI) CANNOT SHIELD ITSELF FROM THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP) COVERAGE UNDER THE CONVENIENCE OF BEING A CORPORATE ENTITY.— [H]LI seeks recourse to the Corporation Code in order to avoid its liability to the FWBs for the price received for the 500-hectare converted lot and the 80.51-hectare SCTEX lot. However, as We have established in Our July 5, 2011 Decision, the rights, obligations and remedies of the parties in the instant case are primarily governed by RA 6657 and HLI cannot shield itself from the CARP coverage merely under the convenience of being a corporate entity. In this regard, it should be underscored that the agricultural lands held by HLI by virtue of the SDP are no ordinary assets. These are special assets, because, originally, these should have been distributed to the FWBs were it not for the approval of the SDP by PARC. Thus, the government cannot renege on its responsibility over these assets. Likewise, HLI is no ordinary corporation as it was formed and organized precisely to make use of these agricultural lands actually intended for distribution to the FWBs. Thus, it cannot shield itself from the coverage of CARP by invoking the Corporation Code. As explained by the Court: x x x. **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**

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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.

14. ID.; ID.; PROCEEDS OF THE SALE OF THE 500 HECTARE CONVERTED LAND AND OF THE 80.51 HECTARE LAND USED FOR THE SCTEX SHOULD BE GIVEN TO THE QUALIFIED FARMWORKER-BENEFICIARIES LESS TAXES, AND EXPENSES RELATING TO THE TRANSFER OF TITLES AS WELL AS LEGITIMATE CORPORATE EXPENSES; 3% PRODUCTION SHARE, NOT DEDUCTIBLE.— Considering that the 500-hectare converted land, as well as the 80.51-hectare SCTEX lot, should have been included in the compulsory coverage were it not for their conversion and valid transfers, then it is only but proper that the price received for the sale of these lots should be given to the qualified FWBs. In effect, the proceeds from the sale shall take the place of the lots. [D]AR claims that the "[l]egitimate corporate expenses should not be deducted as there is no basis for it, especially since only the auditing to be conducted on the financial records of HLI will reveal the amounts to be offset between HLI and the FWBs." The contention is unmeritorious. The possibility of an offsetting should not prevent Us from deducting the legitimate corporate expenses incurred by HLI and Centennary. After all, the Court has ordered for a proper auditing "[i]n order to determine once and for all whether or not all the proceeds were properly utilized by HLI and its subsidiary, Centennary." In this regard, DAR is tasked to "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." Also, it should be noted that it is HLI which shall shoulder the cost of audit to reduce the burden on the part of the FWBs. Concomitantly, the legitimate corporate expenses incurred by HLI and Centennary, as will be determined by a reputable accounting firm to be engaged by DAR, shall be among the

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allowable deductions from the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot. We, however, find that the 3% production share should not be deducted from the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare SCTEX lot. The 3% production share, like the homelots, was among the benefits received by the FWBs as farmhands in the agricultural enterprise of HLI and, thus, should not be taken away from the FWBs.

15. ID.; ID.; LAW ON CONTRACT NOT APPLICABLE TO THE REVOCATION OF PARC RESOLUTION NO. 89-12-2 APPROVING THE STOCK DISTRIBUTION PLAN (SDP).— [T]he minority is of the view that as a consequence of the revocation of the SDP, the parties should be restored to their respective conditions prior to its execution and approval, subject to the application of the principle of set-off or compensation. Such view is patently misplaced. The law on contracts, *i.e.* mutual restitution, does not apply to the case at bar. To reiterate, what was actually revoked by this Court, in its July 5, 2011 Decision, is PARC Resolution No. 89-12-2 approving the SDP. To elucidate, it was the SDP, not the SDOA, which was presented for approval by Tadeco to DAR. The SDP explained the mechanics of the stock distribution but did not make any reference nor correlation to the SDOA. x x x. [W]hat was approved by PARC is the SDP and not the SDOA. There is, therefore, no basis for this Court to apply the law on contracts to the revocation of the said PARC Resolution.

16. ID.; ID.; JUST COMPENSATION; FOR VALUATION PURPOSES, THE DATE OF TAKING IS NOVEMBER 21, 1989, THE DATE OF THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP).— [W]e maintain that the date of "taking" is November 21, 1989, the date when PARC approved HLI's SDP per PARC Resolution No. 89-12-2, in view of the fact that this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition. Further, any doubt should be resolved in favor of the FWBs.

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17. ID.; ID.; ID.; THE APPROVAL OF THE SDP TOOK THE PLACE OF A NOTICE OF COVERAGE ISSUED UNDER COMPULSORY ACQUISITION.— The minority contends that it is the date of the notice of coverage, that is, January 2, 2006, which is determinative of the just compensation HLI is entitled to for its expropriated lands. To support its contention, it cited numerous cases where the time of the taking was reckoned on the date of the issuance of the notice of coverage. However, a perusal of the cases cited by the minority would reveal that none of them involved the stock distribution scheme. Thus, said cases do not squarely apply to the instant case. Moreover, it should be noted that it is precisely because the stock distribution option is a distinctive mechanism under RA 6657 that it cannot be treated similarly with that of compulsory land acquisition as these are two (2) different modalities under the agrarian reform program. As We have stated in Our July 5, 2011 Decision, RA 6657 "provides two (2) alternative modalities, *i.e.*, land or stock transfer, pursuant to either of which the corporate landowner can comply with CARP." In this regard, it should be noted that when HLI submitted the SDP to DAR for approval, it cannot be gainsaid that the stock distribution scheme is clearly HLI's preferred modality in order to comply with CARP. And when the SDP was approved, stocks were given to the FWBs in lieu of land distribution. As aptly observed by the minority itself, "[i]nstead of expropriating lands, what the government took and distributed to the FWBs were shares of stock of petitioner HLI in proportion to the value of the agricultural lands that should have been expropriated and turned over to the FWBs." It cannot, therefore, be denied that upon the approval of the SDP submitted by HLI, the agricultural lands of Hacienda Luisita became subject of CARP coverage. Evidently, the approval of the SDP took the place of a notice of coverage issued under compulsory acquisition.

18. ID.; ID.; ID.; THE DEPARTMENT OF AGRARIAN REFORM'S (DAR) LAND VALUATION IS ONLY PRELIMINARY AND IS NOT FINAL AND CONCLUSIVE UPON THE LANDOWNER.— [I]t bears stressing that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner. The landowner can file an original action with the RTC acting as a special agrarian court to determine just compensation. The court has

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the right to review with finality the determination in the exercise of what is admittedly a judicial function.

19. ID.; ID.; ID.; PAYMENT OF RENTAL FOR THE USE OF THE SUBJECT LAND, NOT PROPER.— A view has also been advanced that HLI should pay the qualified FWBs rental for the use and possession of the land up to the time it surrenders possession and control over these lands. What this view fails to consider is the fact that the FWBs are also stockholders of HLI prior to the revocation of PARC Resolution No. 89-12-2. Also, the 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 their Collective Bargaining Agreement. That being so, there would be unjust enrichment on the part of the FWBs if HLI will still be required to pay rent for the use of the land in question.

20. ID.; ID.; RETENTION LIMITS; 10-YEAR PROHIBITIVE PERIOD RECKONED FROM THE ISSUANCE OF THE EMANCIPATION PATENT (EP) OR CERTIFICATE OF LAND OWNERSHIP AWARD (CLOA), AND NOT THE PLACING OF THE AGRICULTURAL LANDS UNDER CARP COVERAGE.— Without a doubt, under RA 6657 and DAO 1, the awarded lands may only be transferred or conveyed after ten (10) years from the **issuance** and **registration** of the emancipation patent (EP) or certificate of land ownership award (CLOA). Considering that the EPs or CLOAs have not yet been issued to the qualified FWBs in the instant case, the 10-year prohibitive period has not even started. Significantly, the reckoning point is **the issuance of the EP or CLOA**, and **not the placing of the agricultural lands under CARP coverage**. Moreover, if We maintain the position that the qualified FWBs should be immediately allowed the option to sell or convey the agricultural lands in Hacienda Luisita, then all efforts at agrarian reform would be rendered nugatory by this Court, since, at the end of the day, these lands will just be transferred to persons not entitled to land distribution under CARP.

21. ID.; ID.; ID.; RULE ON RETENTION LIMITS NOT APPLICABLE TO STOCK DISTRIBUTION SCHEME BUT ONLY TO THE BUY-BACK SCHEME.— [B]y raising that

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the qualified beneficiaries may sell their interest back to HLI, this smacks of outright indifference to the provision on retention limits under RA 6657, as this Court, in effect, would be allowing HLI, the previous landowner, to own more than five (5) hectares of agricultural land, which We cannot countenance. There is a big difference between the ownership of agricultural lands by HLI under the stock distribution scheme and its eventual acquisition of the agricultural lands from the qualified FWBs under the proposed buy-back scheme. The rule on retention limits does not apply to the former but only to the latter in view of the fact that the stock distribution scheme is sanctioned by Sec. 31 of RA 6657, which specifically allows corporations to divest a proportion of their capital stock that "the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets." On the other hand, no special rules exist under RA 6657 concerning the proposed buy-back scheme; hence, the general rules on retention limits should apply.

22. ID.; ID.; TRANSFER OF THE LAND INTERESTS TO THIRD PARTIES REGARDLESS OF WHETHER THEY HAVE FULLY PAID FOR THE LANDS OR NOT IS A VIOLATION OF THE LAW.— The position that the qualified FWBs are now free to transact with third parties concerning their land interests, regardless of whether they have fully paid for the lands or not, also transgresses the second paragraph of Sec. 27 of RA 6657, which plainly states that "[i]f 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 x x x." When the words and phrases in the statute are clear and unequivocal, the law is applied according to its express terms. *Verbal egis non est recedendum*, or from the words of a statute there should be no departure.

23. ID.; ID.; REVOCATION OF THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP) AFFIRMED; GROUNDS.— Contrary to the assertions of AMBALA and FARM, nowhere in the SDP, RA 6657 and DAO 10 can it be inferred that improving the economic status of the FWBs is among the legal obligations of HLI under the SDP or is an

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imperative imposition by RA 6657 and DAO 10, a violation of which would justify discarding the stock distribution option. x x x. This Court, x x x affirmed the revocation by PARC of its approval of the SDP based on the following grounds: (1) failure of HLI to fully comply with its undertaking to distribute homelots to the FWBs under the SDP; (2) distribution of shares of stock to the FWBs based on the number of "man days" or "number of days worked" by the FWB in a year's time; and (3) 30-year timeframe for the implementation or distribution of the shares of stock to the FWBs.

24. ID.; ID.; CONTROL OVER THE AGRICULTURAL LANDS MUST ALWAYS BE IN THE HANDS OF THE QUALIFIED FARMWORKER-BENEFICIARIES (FWBs).— Upon a review of the facts and circumstances, We realize that the FWBs will never have control over these agricultural lands for as long as they remain as stockholders of HLI. In line with Our finding that control over agricultural lands must always be in the hands of the farmers, We reconsider our ruling that the qualified FWBs should be given an option to remain as stockholders of HLI, inasmuch as these qualified FWBs will never gain control given the present proportion of shareholdings in HLI. A revisit of HLI's Proposal for Stock Distribution under CARP and the Stock Distribution Option Agreement (SDOA) upon which the proposal was based reveals that the total assets of HLI is PhP 590,554,220, while the value of the 4,915.7466 hectares is PhP 196,630,000. Consequently, the share of the farmer-beneficiaries in the HLI capital stock is 33.296% (196,630,000 divided by 590,554.220); 118,391,976.85 HLI shares represent 33.296%. Thus, even if all the holders of the 118,391,976.85 HLI shares unanimously vote to remain as HLI stockholders, which is unlikely, control will never be placed in the hands of the farmer-beneficiaries. Control, of course, means the majority of 50% plus at least one share of the common shares and other voting shares. Applying the formula to the HLI stockholdings, the number of shares that will constitute the majority is 295,112,101 shares (590,554,220 divided by 2 plus one [1] HLI share). The 118,391,976.85 shares subject to the SDP approved by PARC substantially fall short of the 295,112,101 shares needed by the FWBs to acquire control over HLI. Hence, control can NEVER be attained by the FWBs. There is even no assurance

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that 100% of the 118,391,976.85 shares issued to the FWBs will all be voted in favor of staying in HLI, taking into account the previous referendum among the farmers where said shares were not voted unanimously in favor of retaining the SDP. In light of the foregoing consideration, the option to remain in HLI granted to the individual FWBs will have to be recalled and revoked. Moreover, bearing in mind that with the revocation of the approval of the SDP, HLI will no longer be operating under SDP and will only be treated as an ordinary private corporation; the FWBs who remain as stockholders of HLI will be treated as ordinary stockholders and will no longer be under the protective mantle of RA 6657.

25. ID.; ID.; ALL THE BENEFITS AND HOMELOTS RECEIVED BY ALL THE FWBs SHALL BE RESPECTED WITH NO OBLIGATION TO REFUND OR RETURN THEM.— [I]n view of the operative fact doctrine, all the benefits and homelots received by all the FWBs shall be respected with no obligation to refund or return them, since, as We have mentioned in our July 5, 2011 Decision, "the benefits x x x 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."

26. ID.; ID.; RIGHTS TO SUBJECT LANDS VESTED ONLY IN THE 6,296 ORIGINAL FWBs PURSUANT TO SEC. 22 OF RA 6657.— [T]he HLI land shall be distributed only to the 6,296 original FWBs. The remaining 4,206 FWBs are not entitled to any portion of the HLI land, because the rights to said land were vested only in the 6,296 original FWBs pursuant to Sec. 22 of RA 6657. In this regard, DAR shall verify the identities of the 6,296 original FWBs, consistent with its administrative prerogative to identify and select the agrarian reform beneficiaries under RA 6657.

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

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; WHERE A PROVISION OF A STATUTE GOES AGAINST THE FUNDAMENTAL LAW, SPECIALLY IF IT IMPAIRS BASIC RIGHTS AND CONSTITUTIONAL VALUES, THE COURT SHOULD NOT HESITATE TO STRIKE IT DOWN

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AS UNCONSTITUTIONAL.— Where a provision of a statute goes against the fundamental law, specially if it impairs basic rights and constitutional values, the Court should not hesitate to strike it down as unconstitutional. In such a case, refusal to address the issue of constitutionality squarely is neither prudence nor restraint but evasion of judicial duty and abdication of the Court's authority.

2. ID.; ID.; ID.; CONSTITUTIONALITY OF STATUTES; THE REQUIREMENT OF *LIS MOTA* DOES NOT APPLY WHERE THE QUESTION OF CONSTITUTIONALITY WAS RAISED BY THE PARTIES AND ADDRESSING SUCH QUESTION IS UNAVOIDABLE.— The Court should not decline to test the constitutional validity of Section 31 of RA 6657 on the basis of either the requirement of *lis mota* or the doctrine of mootness. The requirement of *lis mota* does not apply where the question of constitutionality was raised by the parties and addressing such question is unavoidable. It cannot be disputed that the parties-in-interest to this case presented the question of constitutionality. Also, any discussion of the stock distribution plan of petitioner Hacienda Luisita, Inc. (HLI) necessarily and inescapably involves a discussion of its legal basis, Section 31 of RA 6657. While the said provision enjoys the presumption of constitutionality, that presumption has precisely been challenged. Its inconsistency with the fundamental law was raised specifically as an issue. More importantly, considerations of public interest render the issue of the constitutionality of Section 31 of RA 6657 inevitable. Agriculture is historically significant in Philippine society and economy and agrarian reform is historically imbued with public interest. Our constitutional history and tradition show that agrarian reform has always been a pillar of social justice. Relevantly, the records of the Constitutional Commission show that **Hacienda Luisita has always been viewed as an acid test of genuine agrarian reform**.

3. ID.; ID.; ID.; ID.; IF THE COURT HAS THE AUTHORITY TO PROMULGATE RULES THAT PROTECT AND ENFORCE CONSTITUTIONAL RIGHTS, IT ALSO HAS THE DUTY TO RENDER DECISIONS THAT ENSURE CONSTITUTIONAL RIGHTS ARE PRESERVED AND SAFEGUARDED, NOT DIMINISHED OR MODIFIED.— [T]he Constitution recognizes the primacy of the right of farmers

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and farmworkers to directly or collectively own the lands they till. Any artificial or superficial substitute such as the stock distribution plan diminishes the right and debases the constitutional intent. If this Court has the authority to promulgate rules that protect and enforce constitutional rights, it also has the duty to render decisions that ensure constitutional rights are preserved and safeguarded, not diminished or modified.

4. ID.; ID.; ID.; ID.; DOCTRINE OF MOOTNESS; EXCEPTIONS; PRESENT.— [T]he invocation of the doctrine of mootness does not provide Section 31 of RA 6657 an unpierceable veil that will prevent the Court from prying into its constitutionality. Indeed, the mootness doctrine admits of several exceptions. x x x. 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. 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. x x x [S]trong 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. 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. x x x. Fourth, this case is capable of repetition, yet evading review.

5. ID.; ID.; ID.; ID.; REQUIREMENT OF *LIS MOTA* AND THE MOOTNESS DOCTRINE ARE NOT CONSTITUTIONAL REQUIREMENTS BUT SIMPLY PRUDENTIAL DOCTRINES OF JUSTICIABILITY FASHIONED BY THE COURT IN THE EXERCISE OF JUDICIAL RESTRAINT.— [T]he requirement of *lis mota* and the mootness doctrine are not constitutional requirements but simply prudential doctrines of justiciability fashioned by the Court in the exercise of judicial restraint. For if the said grounds have been imposed by the Constitution itself, no exception could have been carved by

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courts (for either ground) as courts only apply and interpret the Constitution and do not modify it.

6. ID.; ID.; ID.; ID.; ID.; THE COURT MAY NOT BE HAMPERED IN THE PERFORMANCE OF ITS ESSENTIAL FUNCTION TO UPHOLD THE CONSTITUTION BY PRUDENTIAL DOCTRINES OF JUSTICIABILITY.— Judicial review is particularly important in enjoining and redressing constitutional violations inflicted by all levels of government and government officers. Thus, this Court may not be hampered in the performance of its essential function to uphold the Constitution by prudential doctrines of justiciability. Indeed, in this case, to avoid the constitutional question would be to ignore a violation of the Constitution and to disregard the trampling of basic rights and constitutional values.

7. LABOR AND SOCIAL LEGISLATIONS; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (RA No. 6657); ALLOWING CORPORATE LANDHOLDERS TO CONTINUE OWNING THE LAND BY THE MERE EXPEDIENT OF DIVESTING A PROPORTION OF THEIR CAPITAL STOCK, EQUITY OR PARTICIPATION IN FAVOR OF THEIR WORKERS OR OTHER QUALIFIED BENEFICIARIES DEFEATS THE RIGHT OF FARMERS AND REGULAR FARMWORKERS WHO ARE LANDLESS TO OWN DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL.— Agrarian reform's underlying principle is the recognition of the rights of farmers and farmworkers who are landless to own, directly or collectively, the lands they till. **Under the Constitution, actual land distribution to qualified agrarian reform beneficiaries is mandatory**. Anything that promises something other than land must be struck down for being unconstitutional. By allowing corporate landholders to continue owning the land by the mere expedient of divesting a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries, Section 31 defeats the right of farmers and regular farmworkers who are landless, under Section 4, Article XIII of the Constitution, to own directly or collectively the lands they till. Section 31 of RA 6657 does not therefore serve the ends of social justice as envisioned under the agrarian reform provisions of the Constitution.

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8. ID.; ID.; SECTION 31 THEREOF; UNDULY PREVENTS THE FARMWORKER-BENEFICIARIES (FWBs) FROM OWNING DIRECTLY OR COLLECTIVELY THE LANDS THEY TILL.— Section 31 of RA 6657 as implemented under the stock distribution option agreement merely entitles farmworker-beneficiaries of petitioner HLI to certificates of stocks which represent equity or interest in the corporate landowner, petitioner HLI, not in the land itself. Under Section 31 of RA 6657, the corporate landowner retains ownership of the agricultural land while the farmworker-beneficiaries become stockholders but remain landless. While farmworker-beneficiaries hold a piece of paper that represents interest in the corporation that has owned and still owns the land, that paper actually deprives them of their rightful claim which is ownership of the land they till. Thus, Section 31 unduly prevents the farmworker-beneficiaries from enjoying the promise of Section 4, Article XIII of the Constitution for them to own directly or collectively the lands they till.

9. ID.; ID.; ID.; WHERE THE FARMWORKER-BENEFICIARIES ARE NEITHER THE COLLECTIVE NAKED OWNERS NOR THE COLLECTIVE BENEFICIAL OWNERS OF THE LAND THEY TILL, THERE CAN BE NO VALID COMPLIANCE WITH THE CONSTITUTION'S OBJECTIVE OF COLLECTIVE OWNERSHIP BY FARMERS AND FARMWORKERS.— Corporate ownership by the corporate landowner under Section 31 does not satisfy the collective ownership envisioned under Section 4, Article XIII of the Constitution. Where the farmworker-beneficiaries are neither the collective naked owners nor the collective beneficial owners of the land they till, there can be no valid compliance with the Constitution's objective of collective ownership by farmers and farmworkers. Collective ownership of land under the agrarian reform provisions of the Constitution must operate on the concept of collective control of the land by the qualified farmer and farmworkers. Here, Section 31 of RA 6657 deprives the farmworker-beneficiaries not only of either naked title to or beneficial ownership of the lands they till. It also prevents them from exercising effective control both of the land and of the corporate vehicle as it simply assures beneficiaries "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," "irrespective

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of the value of their equity in the corporation or association." Thus, while they are given voice in the decision-making process of the corporate landowner with respect to the land, the beneficiaries have no guarantee of control of the lands as they are relegated to the status of minority shareholders.

10. POLITICAL LAW; STATUTES; CONSTITUTIONALITY OF; OPERATIVE FACT DOCTRINE; A PRINCIPLE FUNDAMENTALLY BASED ON EQUITY; EQUITY SHOULD BE REFUSED TO THE INIQUITOUS AND GUILTY OF INEQUITY.— [T]he operative fact doctrine should not be applied. The operative fact doctrine is a principle fundamentally based on equity. The basis of the application of the said doctrine in this case was the supposed status of the stock distribution option agreement as having been already implemented. However, equity is extended only to one who comes to court with clean hands. Equity should be refused to the iniquitous and guilty of inequity. For this reason, petitioner HLI may not benefit on the ground of equity from its invalid stock distribution option agreement with the farmworker-beneficiaries as it was found guilty of breach of several material terms and conditions of the said agreement.

11. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); SECTION 31 THEREOF IS UNCONSTITUTIONAL; STOCK DISTRIBUTION AGREEMENT BETWEEN FARMWORKER-BENEFICIARIES AND PETITIONER HACIENDA LUISITA, INCORPORATED (HLI) MUST BE ANNULLED; AGRICULTURAL LAND OF PETITIONER HLI DEEMED PLACED UNDER COMPULSORY COVERAGE OF LAND REFORM ON NOVEMBER 21, 1989.— As Section 31 of RA 6657 is unconstitutional, the stock distribution agreement between petitioner HLI and its farmworker-beneficiaries has no leg to stand on and must perforce be annulled. This means that the agricultural land of petitioner HLI should be deemed placed under compulsory coverage of land reform on November 21, 1989, the date the stock distribution option agreement between petitioner HLI and the farmworker-beneficiaries was approved by the Presidential Agrarian Reform Council (PARC). While PARC could not have validly approved the stock distribution option agreement for lack of legal basis (Section 31 of RA 6657 being unconstitutional), the action of PARC manifested the intent

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of the government to subject petitioner HLI's land to the land reform program. In other words, the agricultural land of petitioner HLI was subjected to land reform with respect to petitioner HLI, the farmworker-beneficiaries and the government through PARC on November 21, 1989.

12. ID.; ID.; THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA) AS AN INVALID MEANS TO IMPLEMENT LAND REFORM MAY BE CONSIDERED AS SIMPLY AN ACCESSORY TO ACHIEVING THE PRINCIPAL OBJECTIVE OF LAND REFORM TO TRANSFER OWNERSHIP OF LAND TO THE FARMWORKER-BENEFICIARIES (FWBs); NOVEMBER 21, 1989 DEEMED AS THE TIME OF TAKING OF THE LAND FROM PETITIONER HLI AND THE DATE FROM WHICH TO RECKON THE JUST COMPENSATION.— While there could have been no valid approval of the stock distribution agreement, the government's intent to bring the land under the coverage of land reform could nonetheless be deemed implemented by its action as the subject matter of land reform is basically the redistribution of land. The stock distribution option agreement as an invalid means to implement land reform may be considered as simply an accessory to achieving the principal objective of land reform to transfer ownership of land to the farmworker-beneficiaries. The principal objective and the manifestation of the government's intent to act thereon subsist despite the invalidity of the accessory. Thus, on November 21, 1989, the government should rightly be considered to have pursued the objective of land reform and transferred the ownership of the land to the farmworker-beneficiaries. November 21, 1989 should therefore be deemed as the time of taking of the land from petitioner HLI, as well as the date from which to reckon the just compensation payable to petitioner HLI.

13. ID.; ID.; PETITIONER HLI CONTINUED POSSESSION OF THE LAND DOES NOT NEGATE TAKING AND TRANSFERRING OF OWNERSHIP TO THE FARMWORKER-BENEFICIARIES ON NOVEMBER 21, 1989; PETITIONER HLI DEEMED POSSESSOR IN GOOD FAITH.— It may, however, be argued that there could have been no taking (in the sense of transferring ownership to the farmworker-beneficiaries) on November 21, 1989 as the land was actually in the possession and control of petitioner HLI.

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True, petitioner HLI may have continued to possess the land but this did not negate taking and transferring of ownership to the farmworker-beneficiaries on November 21, 1989. From that date, petitioner HLI's status became that of a lawful possessor or one who held the "thing or right to keep or enjoy it, the ownership pertaining to another person," particularly the farmworker-beneficiaries. Moreover, petitioner HLI should be deemed as a possessor in good faith, or one that is not aware of any flaw in his title or mode of acquisition thereof. Its reliance on the validity of Section 31 of RA 6657 and, concomitantly, of its stock distribution option agreement could be considered as a mistake on a difficult question of law, a fact which supports its possession in good faith.

14. ID.; ID.; THE LAND OF PETITIONER HLI SUBJECT TO AGRARIAN REFORM, AS DETERMINED BY THE DAR, SHOULD BE IMMEDIATELY AND ACTUALLY DISTRIBUTED TO THE FWBs EXCLUDING THE PORTION OF CONVERTED LAND TRANSFER TO LUISITA INDUSTRIAL PARK CORPORATION (LIPCO) AND RIZAL COMMERCIAL BANKING CORPORATION (RCBC) AND THE PORTION EXPROPRIATED BY THE GOVERNMENT FOR THE SUBIC-CLARK-TARLAC-EXPRESSWAY (SCTEX).— While the stock distribution option agreement was supposed to cover only 4,195 hectares of petitioner HLI's land, no such term or condition should be deemed imposed on the coverage of land reform as of November 21, 1989. The limitation of the coverage shall be determined subject only to such priorities and reasonable retention limits prescribed by law, "taking into account ecological, developmental, or equity considerations." The Department of Agrarian Reform (DAR) shall therefore determine the area properly covered by land reform, guided by the retention limits set by law and taking into account ecological, developmental or equity considerations. Upon determination of the area properly covered by land reform, the DAR should immediately and actually distribute the same to the farmworker-beneficiaries. This shall, however, exclude the portion of converted land transferred to LIPCO and RCBC which shall remain with the said transferees as they were transferees (buyers) in good faith. The land distribution shall also exclude the portion expropriated by the government for the SCTEX.

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15. ID.; ID.; THE FWBs SHALL BE ENTITLED TO THE PORTION OF THE PROCEEDS OF THE SALE OF LIPCO AND RCBC CORRESPONDING TO THE MARKET VALUE THEREOF AS OF NOVEMBER 21, 1989 AND THE PROCEEDS OF THE PORTION EXPROPRIATED FOR THE SCTEX, LESS 3% OF THE PROCEEDS ALREADY GIVEN TO THEM.— For the excluded portions, however, the farmworker-beneficiaries shall be entitled to the portion of the proceeds of the sale to LIPCO and RCBC corresponding to the market value thereof as of November 21, 1989. It would be unfair to rule otherwise as any increase in value of the land may reasonably be attributed to the improvements thereon made by petitioner HLI and petitioner HLI's efforts to have the said portion reclassified to industrial land. Moreover, this would be in consonance with the rule that "the possessor in good faith is entitled to the fruits received before the possession is legally interrupted." The amount accruing to the farmworker-beneficiaries shall also be less the 3% of the proceeds already given to them. On the other hand, the proceeds of the portion expropriated for the SCTEX shall accrue to the farmworker-beneficiaries.

16. ID.; ID.; JUST COMPENSATION; PETITIONER HLI IS ENTITLED TO JUST COMPENSATION BASED ON THE MARKET VALUE OF LAND AS OF NOVEMBER 21, 1989; THE FWBs SHOULD RETURN THE SHARES OF STOCK WHICH THEY RECEIVED.— Indeed, Section 4, Article XIII of the Constitution requires that the landowner be given just compensation. For this purpose, the DAR shall determine the just compensation payable by each farmworker-beneficiary to petitioner HLI as it has jurisdiction in matters involving the administrative implementation and enforcement of agrarian reform laws. The just compensation shall be based on the market value as of November 21, 1989 of the entire portion that may be determined by the DAR as subject to the coverage of land reform. The portion of the proceeds of the portion sold to LIPCO and RCBC as well as the proceeds of the portion expropriated for the SCTEX may be the subject of legal compensation or set off for purposes of the payment of just compensation. [T]he farmworker-beneficiaries shall return the shares of stock which they received to petitioner HLI under the invalid stock distribution option agreement.

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

1. POLITICAL LAW; STATUTES; OPERATIVE FACT DOCTRINE; APPLIES ONLY TO EXECUTIVE ISSUANCES; TERM "EXECUTIVE ACTS," CONSTRUED.— The operative fact doctrine is applicable only in considering the effects of a declaration of unconstitutionality of a **law** (a generic term that includes statutes, rules and regulations issued by the executive department and are accorded the same status as a statute). x x x. *De Agbayani v. Philippine National Bank* (*PNB*), promulgated in this jurisdiction in 1971, was the first instance when the "operative fact doctrine" was extended to consider the effects of a declaration of unconstitutionality of an "executive act." x x x. The Court was then confronted with the issue of whether to give effect to EO 32 prior to the declaration of its unconstitutionality. The Court, *per Justice Enrique Fernando*, resolved the issue in this manner: 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 [Article 7] 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. Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. 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. x x x. When these paragraphs are read together, the phrase "such challenged legislative or executive act" quite obviously pertains to the "administrative or executive *acts, orders and regulations*" mentioned in Article 7 of the

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Civil Code. Thus, **the context in which the term "executive act" was used in *De Agbayani* referred to only executive issuances (acts, orders, rules and regulations) that have the force and effect of laws; it was not used to refer to *any act* performed by the Executive Department.** *De Agbayani's* extension of the operative fact doctrine, therefore, more properly refers only to the recognition of the effects of a declaration of unconstitutionality of *executive issuances*, and *not to all executive acts* as the *ponencia* loosely construes the term. The limited construction of an "executive act," *i.e.*, executive issuances, is actually more consistent with **the rationale behind the operative fact doctrine: the presumption of constitutionality of laws**. Accordingly, it is only to this kind of executive action that the operative fact doctrine can apply.

2. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL) (RA NO. 6657); THE PRESIDENTIAL AGRARIAN REFORM COUNCIL'S (PARC) REVOCATION OF THE APPROVAL OF THE STOCK DISTRIBUTION PLAN (SDP) CARRIED WITH IT THE NULLIFICATION OF THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA), AND THE RESTORATION OF THE PARTIES TO THEIR RESPECTIVE SITUATIONS PRIOR TO THE EXECUTION OF THE NULLIFIED AGREEMENT.— Indeed, much of the confusion that arose in the disposition of this case stemmed from the varying perspectives taken by the members of the Court on **what are the effects of the revocation** and **when these effects should accrue**. The revocation of the SDP amounts to the nullification of the SDOA, and the logical and legal consequence of this should be the restoration of the parties to their *respective situations prior to the execution of the nullified agreement*. There should be no question that the PARC's revocation of the approval of the SDP carried with it the nullification of the SDOA because the PARC's approval is necessary to the validity of the SDOA; accordingly, the effects of the revocation should be deemed to have taken place on **November 21, 1989**, the date when PARC Resolution No. 89-12-2 approving the SDP was issued. To consider any other date (either at the time PARC Resolution No. 2005-32-01, revoking its approval of the SDP, was issued

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or at the time this Court's decision becomes final) is not only iniquitous for the parties but also preposterous under the law. Hence, to accomplish a complete, orderly, and fair disposition of the case, we have to consider the effects of the revocation to accrue from November 21, 1989. The Court should decree that compulsory Comprehensive Agrarian Reform Program coverage should start at this point in time, and then proceed to adjust the relations of the parties with due regard to the intervening events that transpired.

3. ID.; ID.; THE ENTIRE 4,915.75 HECTARES OF LAND SUBJECT OF THE STOCK DISTRIBUTION PLAN (SDP) ARE DEEMED PLACED UNDER THE COMPULSORY COVERAGE THEREOF AS OF NOVEMBER 21, 1989; 500 HECTARES OF LAND NOT INCLUDED IN THE ACTUAL DISTRIBUTION AMONG QUALIFIED FARMWORKERS-BENEFICIARIES BECAUSE OF THE VALIDITY OF ITS TRANSFER TO THIRD PARTIES.— Since the effects of the revocation are deemed to have taken place on November 21, 1989, the entire 4,915.75 hectares of agricultural land should be considered as placed under compulsory coverage as of this time. To declare x x x that 500 hectares of the subject land can no longer be included under the CARL's compulsory coverage because it had already been converted into industrial land is erroneous, as this implies that the land was placed under compulsory coverage only when revocation of the SDP was declared, not in 1989. If this was the case then, the FWBs should not be entitled to any of the proceeds of the sale of the 500 hectares of converted land because their right to these proceeds stems from their right to own the land which accrues only when the land is placed under compulsory coverage. xxx [T]he *ponencia* takes an inconsistent position x x x. To reconcile these inconsistent position, x x x [t]he *ponencia* perhaps meant was that, on account of the revocation, the entire 4,915.75 hectares were deemed placed under compulsory coverage on November 21, 1989; however, despite the inclusion, portions of the land (specifically, the 500 hectares of converted land and the 80 hectares of the SCTEX land) can no longer be *distributed* among the qualified FWBs under Section 22 of the CARL because of the valid transfers made in favor of third parties. Thus, it was not the conversion of the 500-hectare land that exclude it from *compulsory coverage* as it was already

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deemed included in the *compulsory coverage* since 1989; it was the recognition of the valid transfers of these lands to third parties that excluded them from the *actual land distribution* among the qualified FWBs.

4. ID.; ID.; THE LUISITA REALTY CORPORATION (LRC) SHALL BE ENTITLED TO PROVE BEFORE THE DEPARTMENT OF AGRARIAN REFORM (DAR) OF THE VALIDITY OF THE TRANSFER OF THE 200 HECTARES OF CONVERTED LAND.— By failing to intervene in this case, LRC was unable to present evidence supporting its good faith purchase of the 200-hectare converted land. The *ponencia's* conclusion that there was a valid transfer to LRC of the 200 hectares of converted land, therefore, lacks both factual and basis. Thus, x x x [the] LRC be given "full opportunity to present its case before the DAR x x x, the failure of [LRC] 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.* x x x [A] definitive ruling on the transfer of the 200 hectares to [LRC] is premature to make." The FWBs' right to the 200-hectare converted land itself or only to the proceeds of the sale (amounting to ₱500 million) can be determined only after LRC has presented its case before the DAR. x x x. In case the LRC is able to prove its good faith purchase of the 200-hectare converted land before the DAR, the treatment of the proceeds of the sale of this land shall be the same as those of LIPCO/RCBC's 300-hectare converted land – the FWBs will be entitled only to the land's value as of November 21, 1989, and the balance shall be for the HLI as compensation for any improvements introduced.

5. ID.; ID.; THE VALID TRANSFER OF THE 300 HECTARES OF CONVERTED LAND TO LIPCO/RCBC ENTITLES THE FARMWORKERS-BENEFICIARIES (FWBs) ONLY TO THE PROCEEDS OF THE SALE.— LIPCO/RCBC's acquisition in good faith has been adequately proven. Thus, although the 300-hectare converted land should belong to the FWBs on account of the revocation of the SDP, the valid transfer to LIPCO/RCBC entitles them only to the proceeds of the sale.

6. ID.; ID.; THE ENTIRE PROCEEDS OF THE SALE OF THE 80-HECTARES LAND TO THE GOVERNMENT FOR THE SCTEX HIGHWAY SHOULD ACCRUE SOLELY TO THE

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FARMWORKERS-BENEFICIARIES (FWBs).— With respect to the proceeds of the sale of the 80-hectare land to the government for the SCTEX, "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."

7. ID.; ID.; THE FWBs ARE ENTITLED TO THE PROCEEDS OF THE SALE OF THE 300 HECTARES LAND; EXPENDITURES FOR LEGITIMATE CORPORATE PURPOSES, NOT DEDUCTIBLE.— HLI claimed that it had already paid out 3% of the proceeds of the sale of the lands to the FWBs. This amount should thus be deducted from the total proceeds that should be returned to the qualified FWBs. The taxes and expenses related to the transfer of titles should likewise be deducted, since the same amounts will be incurred regardless of the seller (HLI or the FWBs). The *ponencia* proposes that the 3% production share and the expenditures incurred by HLI and Centennary for legitimate corporate purposes should also be deducted from the total proceeds of the sale. In proposing that the 3% production share be deducted from the total proceeds of sale to be returned to the FWBs, the *ponencia* has effectively reversed its own insistent declaration that all the benefits received by the FWBs shall "be respected with no obligation to refund or return them." Its reliance on the "operative fact doctrine" to authorize the FWBs' retention of all the benefits would thus be for naught; what the *ponencia* has given with its right hand, it takes away with its left hand. Also, I do not find any legitimate basis for allowing HLI to deduct from the proceeds of the sale to be turned over to the FWBs the amounts it used for legitimate corporate purposes. x x x. The FWBs are entitled to the proceeds of the sale of the 300-hectare land in lieu of the actual land which they are deemed to have acquired under the CARL since 1989.

8. ID.; ID.; SECTION 27 THEREOF; TRANSFERABILITY OF AWARDED LANDS; CONSTRUED.— The *ponencia* denies

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the applicability of Section 27 of the CARL x x x. **Properly construed, the law means that, as a general rule, the FWBs are prohibited from transferring or conveying the lands within 10 years from the issuance of the EPs or CLOAs, except if the transfer or conveyance is made in favor of (a) a hereditary successor, (b) the government, (c) the Land Bank of the Philippines (*LBP*), or (d) other qualified beneficiaries; transfers or conveyances made in favor of any of those enumerated, even within the 10 years period, are not prohibited by law**. A contrary interpretation would prevent the beneficiary's heir from inheriting the land in the event that the beneficiary dies within the 10-year period, and put the land's ownership in limbo. Thus, under Section 27 of the CARL, the FWBs who are no longer interested in owning their proportionate share of the land may opt to sell it to the government or the LBP, which in turn can sell it to HLI or the LRC (if it is unable to prove its good faith purchase of the 200-hectare converted land), in order not to disrupt their existing operations.

9. ID.; ID.; INTEREST MAY BE AWARDED WHEN THERE IS DELAY IN THE PAYMENT OF JUST COMPENSATION; PRINCIPLE NOT APPLICABLE; HACIENDA LUISITA INC. (HLI) IS ENTITLED TO THE PAYMENT OF JUST COMPENSATION BASED ON THE VALUE OF THE SUBJECT LAND AT THE TIME OF TAKING, WITHOUT ANY INTEREST; PETITIONER HLI SHOULD PAY RENTAL FOR THE USE AND POSSESSION OF THE LAND UP TO THE TIME IT SURRENDER POSSESSIONS THEREOF.— As a consequence of the revocation of the SDP, the 4,915.75 hectares of agricultural land subject of the SDP are deemed placed under the CARL's compulsory coverage since November 21, 1989. Corollary, the taking is deemed to have occurred at this time and HLI is entitled to just compensation based on the value of the entire 4,915.75-hectare land in 1989. In light of this conclusion, the question that begs for a definitive response is: **is HLI entitled to interest from 1989 up to the present on the amount of just compensation it should receive**? In several cases, the Court awarded interests when there is delay in the payment of just compensation. The underlying rationale for the award is to compensate the landowner not simply for the delay, but for the income the landowner would have received from the land

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had there been no immediate taking thereof by the government. This principle, however, does not apply to the present case because HLI never lost possession and control of the land; all the incomes that the land generated were appropriated by HLI. No loss of income from the land (that should be compensated by the imposition of interest on the just compensation due) therefore resulted. On the contrary, it is the qualified FWBs who have been denied of income due to HLI's possession and control of the land since 1989. Thus, HLI should pay the qualified FWBs rental for the use and possession of the land up to the time it surrenders possession and control over these lands. The DAR, as the agency tasked to implement agrarian reform laws, shall have the authority to determine the appropriate rental due from HLI to the qualified FWBs. In recognition, however, of any improvements that HLI may have introduced on these lands, HLI is entitled to offset their value from the rents due.

10. ID.; ID.; CONSEQUENCE OF THE REVOCATION OF THE STOCK DISTRIBUTION PLAN (SDP); PRINCIPLE OF SET-OFF OR COMPENSATION, APPLIED.— The consequence of the revocation of the SDP, x x x is the restoration of the parties to their respective conditions prior to its execution and approval – thus, they are bound to restore whatever they received on account of the SDP. However, this does not prevent the application of the principle of set-off or compensation. The retention, either by the qualified FWBs or the HLI, of some of the benefits received pursuant to the revoked SDP is based on the application of the principle of compensation, not on the misapplication of the operative fact doctrine.

BERSAMIN, *J., concurring and dissenting opinion:*

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN REFORM; JUST COMPENSATION; THE NATURE AND CHARACTER OF LAND AT THE TIME OF ITS TAKING ARE THE PRINCIPAL CRITERIA TO DETERMINE JUST COMPENSATION TO THE LANDOWNER; RATIONALE.— The determination of when the taking occurred is an integral and vital part of the determination and computation of just compensation. The nature and character of land *at the time of its taking* are the principal criteria to determine just

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compensation to the landowner. In *National Power Corporation v. Court of Appeals*, the Court emphasized the importance of the time of taking in fixing the amount of just compensation, thus: xxx [T]he Court xxx invariably held that **the time of taking is the critical date in determining lawful or just compensation**. Justifying this stance, Mr. Justice (later Chief Justice) Enrique Fernando, speaking for the Court in *Municipality of La Carlota vs. The Spouses Felicidad Baltazar and Vicente Gan*, said, "xxx the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of the taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantees just compensation. It would be an injustice to him certainly if from such a period, he could not recover the value of what was lost. There could be on the other hand, injustice to the expropriator if by a delay in the collection, the increment in price would accrue to the owner. The doctrine to which this Court has been committed is intended precisely to avoid either contingency fraught with unfairness."

2. ID.; ID.; ID.; THE RECKONING DATE FOR PURPOSES OF DETERMINING JUST COMPENSATION SHOULD BE LEFT TO THE DEPARTMENT OF AGRARIAN REFORM (DAR) AND LAND BANK, AND TO THE SPECIAL AGRARIAN COURT (SAC) IN CASE OF DISAGREEMENT.— [T]he factual issue of when the taking had taken place as to the affected agricultural lands should not be separated from the determination of just compensation by DAR, Land Bank and SAC. Accordingly, x x x the Court should leave the matter of the reckoning date to be hereafter determined by the DAR and Land Bank pursuant to Section 18 of Republic Act No. 6657. Should the parties disagree thereon, the proper SAC will then resolve their disagreement as an integral part of a petition for determination of just compensation made pursuant to Section 57 of Republic Act No. 6657.

3. ID.; ID.; ID.; THE PETITIONER SHOULD BE COMPENSATED FOR THE VALUE OF THE HOMELOTS GRANTED TO THE FARMWORKERS-BENEFICIARIES (FWBs) PURSUANT TO THE DISCREDITED STOCK DISTRIBUTION PLAN (SDP).— It appears x x x that the

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homelots granted to the FWBs under the SDP do not form part of the total area of the agricultural lands to be turned over to DAR for distribution to the qualified FWBs for which the landowner will be justly compensated. x x x The result will be unfair should the landowner not be justly compensated for the value of the homelots. In such a situation, the taking will be confiscatory and unconstitutional. [H]LI as the landowner should be justly compensated also for the homelots.

SERENO, *J., concurring and dissenting opinion:*

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA NO. 6657); JUST COMPENSATION; RIGHTS OF LANDOWNERS; THE TAKING OF PROPERTIES FOR AGRARIAN REFORM PURPOSES SHOULD NOT RESULT IN THE OPPRESSION OF LANDOWNERS BY PEGGING THE CHEAPEST VALUE FOR THEIR LANDS.— While distribution of land was the prevailing ideology in crafting our agrarian reform policies in the Constitution, the other side of the spectrum is the recognition of the rights of the landowner specifically the right of just compensation. The aim of redistributing agricultural lands under the Constitution was primarily to correct the unjust social structures then prevailing in order to achieve an equitable distribution of wealth from the landed few in favor of the landless majority. Yet, in recognizing the social function of the lands and the demands of social justice, the framers never lost sight of the property rights of landowners, as an inherent limitation to the exercise of the State's power of eminent domain or expropriation, even in cases of agrarian reform. Concomitant with the fundamental right not to be deprived of property without due process of law is the constitutional provision that "[p]rivate property shall not be taken for public use without just compensation." Hence, the policy underlying the provision for eminent domain is to make the private owner "whole" after his property is taken by the State. The taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding. For purposes of taking under the agrarian reform program, **the framers of the Constitution expressly made its intention known that the owners of the land should not receive less than the market value for their expropriated properties and drew parallelisms with the**

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ordinary understanding of just compensation in non-land reform expropriation. Indeed, the matter of just compensation was never meant to involve a severe diminution of what the land owner gets. The aim of just compensation in terms of expropriation, even in agrarian reform, should be just to the owner — that which approximates the market value. Hence, the Court acknowledged the other side of the agrarian reform coin and ruled: **The Comprehensive Agrarian Reform Program** was undertaken primarily for the benefit of our landless farmers. However, **the undertaking should not result in the oppression of landowners by pegging the cheapest value for their lands.** Indeed, the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation, but not at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws.

2. ID.; ID.; ID.; THE VALUE OF THE LAND AT THE TIME OF THE TAKING, NOT AT THE TIME OF THE RENDITION OF JUDGMENT, SHOULD BE TAKEN INTO CONSIDERATION IN COMPUTING JUST COMPENSATION FOR EXPROPRIATION PROCEEDINGS. — Since the farm lands in Hacienda Luisita are to be the subject of distribution, petitioner HLI or Tarlac Development Corporation (TADECO), as landowners, are entitled to just compensation, which is an indispensable legal requirement in agrarian reform expropriation. x x x. Just compensation in cases of expropriation is ordinarily to be ascertained as of the time of the taking. In computing the just compensation for expropriation proceedings, it is the value of the land at the time of the taking, not at the time of the rendition of judgment, which should be taken into consideration. Hence, in determining the value of the land for the payment of just compensation, the time of taking should be the basis. The concept of taking in both land reform and non-land reform expropriations is well-settled. There is taking of private property by the State in expropriation proceedings when the owner is ousted from his property and deprived of his beneficial enjoyment thereof. The "time of taking" is the moment when landowners are deprived of the use and benefit of the property.

3. ID.; ID.; ID.; FACTORS IN ARRIVING AT JUST COMPENSATION FOR LANDOWNERS; GENERAL

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FORMULA.— The CARL, as amended, had expressly identified the factors in arriving at just compensation for landowners whose properties have been subject to land reform expropriation: In determining just compensation, **the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR)**, translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The **social and economic benefits** contributed by the farmers and the farmworkers and by the Government to the property as well as the **nonpayment of taxes or loans secured from any government financing institution on the said land** shall be considered as additional factors to determine its valuation. Pursuant to its rule-making powers, the Department of Agrarian Reform (DAR) reduced these factors into a basic general formula that computes the value of the land subject of agrarian reform in this manner: Land Value = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1) Where CNI = Capitalized Net Income CS = Comparable Sales MV = Market Value per Tax Declaration. In a long line of cases, the Court has given judicial imprimatur to the above formulation made by the DAR. x x x. **In all these cases, the formula approximately reflects the fair market value of the property at the time of the Notice of Coverage** to estimate the loss suffered by the landowner, whose property was the subject of expropriation.

4. ID.; ID.; ID.; THE DATE OF THE NOTICE OF COVERAGE IS DETERMINATIVE OF THE JUST COMPENSATION THAT THE LANDOWNER IS ENTITLED TO FOR ITS EXPROPRIATED LANDS.— [U]nder the uniform rulings of this Court, the notice of coverage commences the process of acquiring private agricultural lands covered by the CARP. The date of the notice of coverage is therefore determinative of the just compensation petitioner HLI is entitled to for its expropriated lands. In computing capitalized net income under the DAR formula, one should use the average gross production of the latest available 12 months immediately preceding **the date of notice of coverage**, in case of compulsory acquisition, and the average selling price of the

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latest available 12 months prior to the date of receipt of the claim folder by the Land Bank of the Philippines for processing.

5. ID.; ID.; ID.; THE NATURE AND CHARACTER OF THE LAND AT THE TIME OF ITS TAKING IS THE PRINCIPAL CRITERION FOR DETERMINING JUST COMPENSATION FOR LANDOWNERS.— The rationale for pegging the period of computing the value so close or near the present market value at the time of the taking is to consider the appreciation of the property brought about by improvements therein and other factors. The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner. All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered. For the compensation to be just to the owner of a commercial farm land, the facilities and improvements introduced by the landowner — not just the land — shall also be taken into consideration. It is but equitable to extend to the landowner compensation arising from the appreciation of the property due to the improvements introduced therein. To simply disregard the changes, appreciation or improvements in the agricultural lands of Hacienda Luisita by pegging the property to its 1989 value is to resort to expropriation that is **confiscatory** — considering that it will be the sole exception to a long line of jurisprudence — and not compensatory which is prescribed under the Constitution as a fundamental right of a landowner.

6. ID.; ID.; ID.; JUST COMPENSATION IN EXPROPRIATIONS SHOULD APPROXIMATE EQUIVALENT VALUE THAT IS REAL, SUBSTANTIAL, FULL AND AMPLE; THE PERIOD OF TAKING IS RECKONED FROM THE DATE OF THE NOTICE OF COVERAGE.— With the equal protection clause in mind, it is simply wrong for landowners to have their real properties, subject of expropriation, valued several years or even decades behind, considering the upward trend in property values. The Court explained this inherent unfairness when it was confronted by a non-land reform expropriation case, in which the trial court and the appellate court fixed the valuation of the property at its 1984 and 1993 values, respectively, in this wise: In eminent domain cases, the time of taking is the filing of the complaint, if there was

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no actual taking prior thereto. Hence, in this case, **the value of the property at the time of the filing of the complaint on November 20, 1990** should be considered in determining the just compensation due the respondents. x x x. **It was certainly unfair for the trial court to have considered a property value several years behind its worth at the time the complaint in this case was filed on November 20, 1990. The landowners are necessarily shortchanged**, considering that, as a rule, land values enjoys steady upward movement. It was likewise erroneous for the appellate court to have fixed the value of the property on the basis of a 1993 assessment. NPC would be paying too much. Petitioner corporation is correct in arguing that the respondents should not profit from an assessment made years after the taking. The expropriation proceedings in this case having been initiated by NPC on November 20, 1990, property values on such month and year should lay the basis for the proper determination of just compensation. x x x. Applied to the instant case, the more just and equitable solution is to reckon the period of the taking from the date of the notice of coverage under the fifth approach, since this was the time that petitioner HLI was put on notice that its stock distribution option was defective and that its agricultural lands therein would be subject to compulsory coverage and direct land distribution under the CARL. It is argued that the time the SDOA was signed and/or the PARC Resolution was issued could be considered as the time petitioner HLI was given due notice that its agricultural lands would be subject of agrarian reform. This argument is undeniably unfair and contrary to uniform jurisprudence interpreting the constitutional dictum that just compensation in expropriations should approximate equivalent value that is real, substantial, full and ample. Landowners would be shortchanged if their real properties are taken by the State in exchange for compensation that is pegged at values two decades prior. In this case, unwarranted discrimination would be committed against petitioner HLI if the agricultural lands to be distributed to the FWBs are to be valued at their 1989 levels.

7. ID.; ID.; ID.; ID.; THE PAYMENT OF JUST COMPENSATION TO PETITIONER HACIENDA LUISITA, INC. (HLI) MUST BE PEGGED TO THE DATE OF NOTICE OF COVERAGE UNDER THE PREVAILING LAWS, RULES AND JURISPRUDENCE.— The approximation of fair value of the

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expropriated lands as just compensation is not meant to increase the burdens of payment by the qualified FWBs. **When the framers of the Constitution originally determined that just compensation, as understood in prevailing jurisprudence, was to be given to landowners in agrarian reform expropriation, the point was clarified that the amounts to be awarded to the landowners were not the exact figures that would in turn be paid by the farmers, in other words it should be subsidized** x x x. Thus, the original intention was that there should be **no strict correspondence** between the just compensation due to the landowner and the amounts to be paid by the farmworkers x x x. Hence, there was an acknowledgement of the limited capacity of the farmers to pay for value of the expropriated lands under a willing-buyer-willing seller formulation. Thus, the obligation was imposed on the State to subsidize payments in order to support the financial arrangements of the country's agrarian reform program. The fair value paid to the landowner for the distributed lands is to be shouldered by the State, in line with the right to just compensation and the limitations on the state power of expropriation. However, a different principle governs when it is the State that will receive amortization payments from the farmers for expropriated lands, namely the policy of social justice. Hence, the State's function is to subsidize the repayment schemes and offer terms that are affordable to the farmers considering their limited capacity to pay. The burden is now on the State to consider programs that are more financially viable in order to balance the rights of the landowners to just compensation with the social justice demands of the poor farmworkers with limited capabilities to simultaneously pursue agricultural enterprises and pay for the lands. Petitioner HLI, as a corporate landowner, must undoubtedly share the costs and burdens of the country's type of agrarian reform scheme by surrendering the agricultural lands to the government for distribution to the qualified FWBs. But in order to come within the constitutional directives on eminent domain and just compensation, its sacrifice cannot be made to be overly burdensome as to force them to receive but a small fraction of current market values for its expropriated properties. In ruling for the payment of just compensation to petitioner HLI under the fifth approach — which is pegged to the date of notice of coverage under the prevailing laws, rules and jurisprudence

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— the Court will perform its obligation to uphold the dictates of social justice in distributing the lands in Hacienda Luisita to the qualified FWBs, but not to the extent of sacrificing the right of landowners and consigning them to accept the cheapest value for their lands.

8. ID.; ID.; QUALIFIED FARMWORKER-BENEFICIARIES (FWBs) IN HACIENDA LUISITA SHOULD BE FREED FROM THE STRICT APPLICATION OF THE TEN-YEAR PROHIBITION UNDER THE LAW AND SHOULD BE ALLOWED FULL DISCRETION TO DISPOSE THE PROPERTIES AS THEY SEE FIT.— The qualified FWBs in Hacienda Luisita should not only be confined to a ten-year license to farm the distributed lands, but should be able to enjoy all the rights to the land and fruits thereof. As full owners, the qualified FWBs who would be awarded lands must be afforded the entire gamut of opportunities to make use of the land as their circumstances and capabilities see fit. Nothing prevents them from continuing to till the agricultural land, whether individually or as a collective, as in the case of a cooperative. However, the same freedom should be afforded to them when they see that the best economically and financially advantageous use of the property is to sell portions of the property, especially in this case in which developments in the neighboring lots have greatly enhanced the value thereof. To prolong for a decade the FWBs' enjoyment of the right to transfer and dispose of portions of the agricultural lands is to continue to bind them to the land. Without any assistance from the government or other civic organizations, FWBs may be awarded a possible pyrrhic legal victory, in which they own the land but without the financial means to till and cultivate it. Freeing them from the strict application of the ten-year prohibition under the CARL, will allow them full discretion to dispose and transfer portions of the property as they see fit and as are suitable to their needs. This will release locked-up capital in the soil and enable the qualified FWBs to use the proceeds thereof in other productive enterprises or in the procurement of other assets necessary for tilling the remaining land. To insist that the rights of the FWB sleep for a period of ten years is unrealistic and may seriously deprive them of real opportunities to capitalize on and maximize the victory of direct land distribution. The restriction will limit their access

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to credit markets, as studies in land reform have shown. x x x Imposing a ten-year restriction will decrease the desirability of these farm lands as collateral and will even increase the transaction costs for private creditors to extend farm loans to the small qualified FWBs. x x x. Considering the perceived inadequacy of public funds to provide the qualified FWBs access to farm credits and loans to finance the cultivation of the awarded lands, it is necessary to afford them the prospect of soliciting private funds and loans to cultivate and develop their lands by freeing them from the 10-year prohibition period. At this delayed stage in the agrarian reform program covering Hacienda Luisita after the failed stock distribution mechanism, the protection afforded by inflexible restriction on the alienability of the awarded lands is greatly outweighed by the market opportunities available to the qualified FWBs if full ownership is given to them.

9. POLITICAL LAW; CONSTITUTIONAL LAW; STATUTES; CONSTITUTIONALITY OF; DOCTRINE OF OPERATIVE FACTS; AN EXCEPTION TO THE GENERAL RULE THAT THE PRONOUNCEMENT OF UNCONSTITUTIONALITY BY THE COURT RETROACTS TO ALL ACTS UNDERTAKEN BETWEEN THE EFFECTIVITY OF THE LAW AND THE DECLARATION OF ITS INVALIDITY.— The general rule is that an unconstitutional law has no force and effect – it produces no rights, imposes no duties and affords no protection. Hence, the pronouncement of unconstitutionality by the Court **retroacts to all acts undertaken between the effectivity of the law and the declaration of its invalidity.** The doctrine of operative facts serves as an **exception** to this general rule. The declaration of a law or an executive act as unconstitutional is given **limited retroactive application** in cases in which acts or circumstances may have arisen in the operation of the invalidated law prior to the pronouncement of invalidity. Considerations of equity would avert the injustice of nullifying the interim effects of a person's good faith reliance on the law's provisions. The cases involving the unconstitutionality of the debt moratorium laws and the non-payment of debts during the suspensive period prior to the declaration best exemplify the application of the exceptional doctrine of operative facts. In these instances, equity interests of the parties surpass the concern over the retroactive application of the law's unconstitutionality.

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10. ID.; ID.; ID.; ID.; ID.; TO BE APPLICABLE, A LAW OR AN EXECUTIVE ACT THAT WAS MADE EFFECTIVE FOR A TEMPORARY PERIOD SHOULD HAVE BEEN INVALIDATED BY THE COURT FOR BEING INHERENTLY IN CONTRAVENTION OF THE CONSTITUTION AND, THUS, WITHOUT FORCE AND EFFECT FROM ITS VERY INCEPTION; THE STOCK DISTRIBUTION OPTIONS AGREEMENT (SDOA) WAS AN APPLICATION OF THE LAW, AND NOT A STATUTE OR EXECUTIVE ACT.— No law or executive act with respect to stock distribution options has been declared unconstitutional by the Court. For the operative facts doctrine to have been applied, a law or an executive act that was made effective for a temporary period should have been invalidated by the Court for being inherently in contravention of the Constitution and, thus, without force and effect from its very inception. Except for the previous Separate Opinions of Chief Justice Renato Corona and Justice Jose Mendoza, a majority of the Court generally refrained from making any declaration as to the constitutional validity of a stock distribution option on the ground that it is not the *lis mota* of the present Petition, and that the challenge was not timely made, among others. What the Court invalidated was the SDOA, which was simply an application of the law, and not any statute or executive act, on the basis of its having violated the spirit and intent of the existing law. The invalidated PARC Resolution that approved the SDOA of Hacienda Luisita did not rise to the level of a legislative statute or executive act, in which the operative facts doctrine would become applicable.

11. ID.; ID.; ID.; ID.; ID.; THE RESOLUTION OF THE PRESIDENTIAL AGRARIAN REFORM COUNCIL (PARC) APPROVING THE SDOA, WHILE AN EXECUTIVE ACT, IS NOT AN EXERCISE OF A QUASI-LEGISLATIVE POWER BY THE EXECUTIVE, BUT A MERE WRONGFUL APPLICATION OF THE LAW ON STOCK DISTRIBUTION OPTIONS UNDER THE CARL.— The PARC Resolution, while an executive act, is not an exercise of a quasi-legislative power by the executive, but a mere wrongful application of the law on stock distribution options under the CARL. The CARL provided the norms used to evaluate any stock distribution option and this was applied by the PARC in deciding whether

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to approve the SDOA. Hence, it was the interpretation of the PARC when it mistakenly approved the SDOA of petitioner HLI and the FWBs that has been declared invalid, and not the enabling law itself. The source of infirmity in this case lies not in the provisions of the CARL allowing stock distribution options, but in the erroneous approval previously granted by the PARC. The good faith reliance of petitioner HLI with respect to the approval (albeit erroneous) of its SDOA does not justify the operation of the doctrine, since no less than this Court has found that the SDOA and its approval were in utter violation of the intent of the CARL on stock distribution options.

12. ID.; ID.; ID.; ID.; ID.; CAN ONLY COME INTO PLAY AS A RULE OF EQUITY IN CASES WHERE THERE IS A VACUUM IN THE LAW CREATED BY THE SUBSEQUENT DECLARATION OF NULLITY BY THE COURT.— [I]t would be incongruous to avoid the constitutionality issue of the stock distribution mechanism under the CARP on the ground that it is not the *lis mota* of the case, yet at the same time, invoke the operative facts doctrine. There is simply no room for the application of operative facts doctrine, absent an unconstitutionally invalid legislative or executive act. The operative facts doctrine can only come into play as a rule of **equity** in cases where there is a vacuum in the law created by the subsequent declaration of nullity by the Court. In those instances where the operative facts doctrine was used (*i.e.*, debt moratorium cases), the unraveling of the effects of the declaration of unconstitutionality resorted to a dearth in the law and the need for the courts to provide guidance as to its retroactive application. **In this case, no such vacuum exists, as in fact the CARL itself provides for the ultimate consequence when a stock distribution plan or option is eventually invalidated – direct land distribution**. The Court therefore need not exercise its equity jurisdiction.

APPEARANCES OF COUNSEL

Belo Gozon Parel Asuncion & Lucila for petitioner.

Jorge Cesar M. Sandiego for petitioner-intervenor.

Public Interest Law Center and *Jobert Ilarde Pahilaga and David D. Erro* for R. Galang and AMBALA.

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Carmelito M. Santoyo for Alyansa ng Manggagawang Bukid Ng Hacienda Luisita/ Noel Mallari/ United Luisita Workers/ Eldifonso Pingol/Supervisory Group of the Hacienda Luisita, Inc. & Windsor Andaya.

Christian S. Monsod, Marlon J. Manuel, Magistrado A. Mendoza, Jr., Joeven D. Dellosa, Edgar DL. Bernal and Mary Claire A. Demaisip for Farm Peace Foundation, Inc.

Law Firm of Diaz Del Rosario & Associates for RCBC.

Poblador Bautista & Reyes for Luisita Industrial Park Corp.

R E S O L U T I O N

VELASCO, JR., *J.*:

For resolution are the (1) *Motion for Clarification and Partial Reconsideration* dated July 21, 2011 filed by petitioner Hacienda Luisita, Inc. (HLI); (2) *Motion for Partial Reconsideration* dated July 20, 2011 filed by public respondents Presidential Agrarian Reform Council (PARC) and Department of Agrarian Reform (DAR); (3) *Motion for Reconsideration* dated July 19, 2011 filed by private respondent Alyansa ng mga Manggagawang Bukid sa Hacienda Luisita (AMBALA); (4) *Motion for Reconsideration* dated July 21, 2011 filed by respondent-intervenor Farmworkers Agrarian Reform Movement, Inc. (FARM); (5) *Motion for Reconsideration* dated July 21, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. (Supervisory Group) and Windsor Andaya (collectively referred to as "Mallari, *et al.*"); and (6) *Motion for Reconsideration* dated July 22, 2011 filed by private respondents Rene Galang and AMBALA.[2]

On July 5, 2011, this Court promulgated a Decision[3] in the above-captioned case, denying the petition filed by HLI and

[2] The *Motion for Reconsideration* dated July 22, 2011 was filed by private respondents Rene Galang and AMBALA, through Atty. Romeo T. Capulong of the Public Interest Law Center, as lead counsel for Rene Galang and as collaborating counsel of Atty. Jobert Pahilga of SENTRA for AMBALA.

[3] G.R. No. 171101, July 5, 2011; hereinafter referred to as "July 5, 2011 Decision."

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affirming Presidential Agrarian Reform Council (PARC) Resolution No. 2005-32-01 dated December 22, 2005 and PARC Resolution No. 2006-34-01 dated May 3, 2006 with the modification that the original 6,296 qualified farmworker-beneficiaries of Hacienda Luisita (FWBs) shall have the option to remain as stockholders of HLI.

In its *Motion for Clarification and Partial Reconsideration* dated July 21, 2011, HLI raises the following issues for Our consideration:

A

IT IS NOT PROPER, EITHER IN LAW OR IN EQUITY, TO DISTRIBUTE TO THE ORIGINAL FWBs OF 6,296 THE UNSPENT OR UNUSED BALANCE OF THE PROCEEDS OF THE SALE OF THE 500 HECTARES AND 80.51 HECTARES OF THE HLI LAND, BECAUSE:

(1) THE PROCEEDS OF THE SALE BELONG TO THE CORPORATION, HLI, AS CORPORATE CAPITAL AND ASSETS IN SUBSTITUTION FOR THE PORTIONS OF ITS LAND ASSET WHICH WERE SOLD TO THIRD PARTY;

(2) TO DISTRIBUTE THE CASH SALES PROCEEDS OF THE PORTIONS OF THE LAND ASSET TO THE FWBs, WHO ARE STOCKHOLDERS OF HLI, IS TO DISSOLVE THE CORPORATION AND DISTRIBUTE THE PROCEEDS AS LIQUIDATING DIVIDENDS WITHOUT EVEN PAYING THE CREDITORS OF THE CORPORATION;

(3) THE DOING OF SAID ACTS WOULD VIOLATE THE STRINGENT PROVISIONS OF THE CORPORATION CODE AND CORPORATE PRACTICE.

B

IT IS NOT PROPER, EITHER IN LAW OR IN EQUITY, TO RECKON THE PAYMENT OF JUST COMPENSATION FROM NOVEMBER 21, 1989 WHEN THE PARC, THEN UNDER THE CHAIRMANSHIP OF DAR SECRETARY MIRIAM DEFENSOR-SANTIAGO, APPROVED THE STOCK DISTRIBUTION PLAN (SDP) PROPOSED BY TADECO/HLI, BECAUSE:

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(1) THAT PARC RESOLUTION NO. 89-12-2 DATED NOVEMBER 21, 1989 WAS NOT THE "ACTUAL TAKING" OF THE TADECO's/ HLI's AGRICULTURAL LAND;

(2) THE RECALL OR REVOCATION UNDER RESOLUTION NO. 2005-32-01 OF THAT SDP BY THE NEW PARC UNDER THE CHAIRMANSHIP OF DAR SECRETARY NASSER PANGANDAMAN ON DECEMBER 22, 2005 OR 16 YEARS EARLIER WHEN THE SDP WAS APPROVED DID NOT RESULT IN "ACTUAL TAKING" ON NOVEMBER 21, 1989;

(3) TO PAY THE JUST COMPENSATION AS OF NOVEMBER 21, 1989 OR 22 YEARS BACK WOULD BE ARBITRARY, UNJUST, AND OPPRESSIVE, CONSIDERING THE IMPROVEMENTS, EXPENSES IN THE MAINTENANCE AND PRESERVATION OF THE LAND, AND RISE IN LAND PRICES OR VALUE OF THE PROPERTY.

On the other hand, PARC and DAR, through the Office of the Solicitor General (OSG), raise the following issues in their *Motion for Partial Reconsideration* dated July 20, 2011:

THE DOCTRINE OF OPERATIVE FACT DOES NOT APPLY TO THIS CASE FOR THE FOLLOWING REASONS:

I

THERE IS NO LAW OR RULE WHICH HAS BEEN INVALIDATED ON THE GROUND OF UNCONSTITUTIONALITY; AND

II

THIS DOCTRINE IS A RULE OF EQUITY WHICH MAY BE APPLIED ONLY IN THE ABSENCE OF A LAW. IN THIS CASE, THERE IS A POSITIVE LAW WHICH MANDATES THE DISTRIBUTION OF THE LAND AS A RESULT OF THE REVOCATION OF THE STOCK DISTRIBUTION PLAN (SDP).

For its part, AMBALA poses the following issues in its *Motion for Reconsideration* dated July 19, 2011:

I

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT

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SECTION 31 OF REPUBLIC ACT 6657 (RA 6657) IS CONSTITUTIONAL.

II

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT ONLY THE [PARC'S] APPROVAL OF HLI's PROPOSAL FOR STOCK DISTRIBUTION UNDER CARP AND THE [SDP] WERE REVOKED AND NOT THE STOCK DISTRIBUTION OPTION AGREEMENT (SDOA).

III

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN APPLYING THE DOCTRINE OF OPERATIVE FACTS AND IN MAKING THE [FWBs] CHOOSE TO OPT FOR ACTUAL LAND DISTRIBUTION OR TO REMAIN AS STOCKHOLDERS OF [HLI].

IV

THE MAJORITY OF THE MEMBERS OF THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT IMPROVING THE ECONOMIC STATUS OF FWBs IS NOT AMONG THE LEGAL OBLIGATIONS OF HLI UNDER THE SDP AND AN IMPERATIVE IMPOSITION BY [RA 6657] AND DEPARTMENT OF AGRARIAN REFORM ADMINISTRATIVE ORDER NO. 10 (DAO 10).

V

THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT THE CONVERSION OF THE AGRICULTURAL LANDS DID NOT VIOLATE THE CONDITIONS OF RA 6657 AND DAO 10.

VI

THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT PETITIONER IS ENTITLED TO PAYMENT OF JUST COMPENSATION. SHOULD THE HONORABLE COURT AFFIRM THE ENTITLEMENT OF THE PETITIONER TO JUST COMPENSATION, THE SAME SHOULD BE PEGGED TO FORTY THOUSAND PESOS (PhP 40,000.00) PER HECTARE.

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VII

THE HONORABLE COURT, WITH DUE RESPECT, ERRED IN HOLDING THAT LUISITA INDUSTRIAL PARK CORP. (LIPCO) AND RIZAL COMMERCIAL BANKING CORPORATION (RCBC) ARE INNOCENT PURCHASERS FOR VALUE.

In its *Motion for Reconsideration* dated July 21, 2011, FARM similarly puts forth the following issues:

I

THE HONORABLE SUPREME COURT SHOULD HAVE STRUCK DOWN SECTION 31 OF [RA 6657] FOR BEING UNCONSTITUTIONAL. THE CONSTITUTIONALITY ISSUE THAT WAS RAISED BY THE RESPONDENTS-INTERVENORS IS THE *LIS MOTA* OF THE CASE.

II

THE HONORABLE SUPREME COURT SHOULD NOT HAVE APPLIED THE DOCTRINE OF "OPERATIVE FACT" TO THE CASE. THE OPTION GIVEN TO THE FARMERS TO REMAIN AS STOCKHOLDERS OF HACIENDA LUISITA IS EQUIVALENT TO AN OPTION FOR HACIENDA LUISITA TO RETAIN LAND IN DIRECT VIOLATION OF THE COMPREHENSIVE AGRARIAN REFORM LAW. THE DECEPTIVE STOCK DISTRIBUTION OPTION / STOCK DISTRIBUTION PLAN CANNOT JUSTIFY SUCH RESULT, ESPECIALLY AFTER THE SUPREME COURT HAS AFFIRMED ITS REVOCATION.

III

THE HONORABLE SUPREME COURT SHOULD NOT HAVE CONSIDERED [LIPCO] AND [RCBC] AS INNOCENT PURCHASERS FOR VALUE IN THE INSTANT CASE.

Mallari, *et al.*, on the other hand, advance the following grounds in support of their *Motion for Reconsideration* dated July 21, 2011:

(1) THE HOMELOTS REQUIRED TO BE DISTRIBUTED HAVE ALL BEEN DISTRIBUTED PURSUANT TO THE MEMORANDUM OF AGREEMENT. WHAT REMAINS MERELY IS THE RELEASE OF TITLE FROM THE REGISTER OF DEEDS.

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(2) THERE HAS BEEN NO DILUTION OF SHARES. CORPORATE RECORDS WOULD SHOW THAT IF EVER NOT ALL OF THE 18,804.32 SHARES WERE GIVEN TO THE ACTUAL ORIGINAL FARMWORKER BENEFICIARY, THE RECIPIENT OF THE DIFFERENCE IS THE NEXT OF KIN OR CHILDREN OF SAID ORIGINAL [FWBs]. HENCE, WE RESPECTFULLY SUBMIT THAT SINCE THE SHARES WERE GIVEN TO THE SAME "FAMILY BENEFICIARY," THIS SHOULD BE DEEMED AS SUBSTANTIAL COMPLIANCE WITH THE PROVISIONS OF SECTION 4 OF DAO 10.

(3) THERE HAS BEEN NO VIOLATION OF THE 3-MONTH PERIOD TO IMPLEMENT THE [SDP] AS PROVIDED FOR BY SECTION 11 OF DAO 10 AS THIS PROVISION MUST BE READ IN LIGHT OF SECTION 10 OF EXECUTIVE ORDER NO. 229, THE PERTINENT PORTION OF WHICH READS, "THE APPROVAL BY THE PARC OF A PLAN FOR SUCH STOCK DISTRIBUTION, AND ITS INITIAL IMPLEMENTATION, SHALL BE DEEMED COMPLIANCE WITH THE LAND DISTRIBUTION REQUIREMENT OF THE CARP."

(4) THE VALUATION OF THE LAND CANNOT BE BASED AS OF NOVEMBER 21, 1989, THE DATE OF APPROVAL OF THE STOCK DISTRIBUTION OPTION. INSTEAD, WE RESPECTFULLY SUBMIT THAT THE "TIME OF TAKING" FOR VALUATION PURPOSES IS A FACTUAL ISSUE BEST LEFT FOR THE TRIAL COURTS TO DECIDE.

(5) TO THOSE WHO WILL CHOOSE LAND, THEY MUST RETURN WHAT WAS GIVEN TO THEM UNDER THE SDP. IT WOULD BE UNFAIR IF THEY ARE ALLOWED TO GET THE LAND AND AT THE SAME TIME HOLD ON TO THE BENEFITS THEY RECEIVED PURSUANT TO THE SDP IN THE SAME WAY AS THOSE WHO WILL CHOOSE TO STAY WITH THE SDO.

Lastly, Rene Galang and AMBALA, through the Public Interest Law Center (PILC), submit the following grounds in support of their *Motion for Reconsideration* dated July 22, 2011:

I

THE HONORABLE COURT, WITH DUE RESPECT, GRAVELY ERRED IN ORDERING THE HOLDING OF A VOTING OPTION

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INSTEAD OF TOTALLY REDISTRIBUTING THE SUBJECT LANDS TO [FWBs] in [HLI].

A. THE HOLDING OF A VOTING OPTION HAS NO LEGAL BASIS. THE REVOCATION OF THE [SDP] CARRIES WITH IT THE REVOCATION OF THE [SDOA].

B. GIVING THE [FWBs] THE OPTION TO REMAIN AS STOCKHOLDERS OF HLI WITHOUT MAKING THE NECESSARY CHANGES IN THE CORPORATE STRUCTURE WOULD ONLY SUBJECT THEM TO FURTHER MANIPULATION AND HARDSHIP.

C. OTHER VIOLATIONS COMMITTED BY HLI UNDER THE [SDOA] AND PERTINENT LAWS JUSTIFY TOTAL LAND REDISTRIBUTION OF HACIENDA LUISITA.

II

THE HONORABLE COURT, WITH DUE RESPECT, GRAVELY ERRED IN HOLDING THAT THE [RCBC] AND [LIPCO] ARE INNOCENT PURCHASERS FOR VALUE OF THE 300-HECTARE PROPERTY IN HACIENDA LUISITA THAT WAS SOLD TO THEM PRIOR TO THE INCEPTION OF THE PRESENT CONTROVERSY.

Ultimately, the issues for Our consideration are the following: (1) applicability of the operative fact doctrine; (2) constitutionality of Sec. 31 of RA 6657 or the *Comprehensive Agrarian Reform Law of 1988*; (3) coverage of compulsory acquisition; (4) just compensation; (5) sale to third parties; (6) the violations of HLI; and (7) control over agricultural lands.

We shall discuss these issues accordingly.

I. Applicability of the Operative Fact Doctrine

In their motion for partial reconsideration, DAR and PARC argue that the doctrine of operative fact does not apply to the instant case since: (1) there is no law or rule which has been invalidated on the ground of unconstitutionality;[4] (2) the doctrine of operative fact is a rule of equity which may be applied only in the absence of a law, and in this case, they maintain that there is a positive law which mandates the distribution of the

[4] PARC/DAR Motion for Reconsideration (MR), p. 7.

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land as a result of the revocation of the stock distribution plan (SDP).[5]

Echoing the stance of DAR and PARC, AMBALA submits that the operative fact doctrine should only be made to apply in the extreme case in which equity demands it, which allegedly is not in the instant case.[6] It further argues that there would be no undue harshness or injury to HLI in case lands are actually distributed to the farmworkers, and that the decision which orders the farmworkers to choose whether to remain as stockholders of HLI or to opt for land distribution would result in inequity and prejudice to the farmworkers.[7] The foregoing views are also similarly shared by Rene Galang and AMBALA, through the PILC.[8] In addition, FARM posits that the option given to the FWBs is equivalent to an option for HLI to retain land in direct violation of RA 6657.[9]

(a) Operative Fact Doctrine Not Limited to Invalid or Unconstitutional Laws

Contrary to the stance of respondents, the operative fact doctrine does not only apply to laws subsequently declared unconstitutional or unlawful, as it also applies to executive acts subsequently declared as invalid. As We have discussed in Our July 5, 2011 Decision:

> 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*, We held:
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> > Petitioner postulates that the "operative fact" doctrine is inapplicable to the present case because it is an equitable doctrine

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[5] PARC/DAR MR, p. 16.

[6] AMBALA MR, p. 51.

[7] AMBALA MR, pp. 55-60.

[8] Rene Galang and AMBALA MR, pp. 11-13.

[9] FARM MR, p. 47.

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:

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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.

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

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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:
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> '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 from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.'
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> '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.'"

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> 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 in the original.)

Bearing in mind that PARC Resolution No. 89-12-2[10]—an executive act—was declared invalid in the instant case, the operative fact doctrine is clearly applicable.

Nonetheless, the minority is of the persistent view that the applicability of the operative fact doctrine should be limited to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature. Thus, the minority concludes that the phrase "executive act" used in the case of *De Agbayani v. Philippine National Bank*[11] refers only to acts, orders, and rules and regulations that have the force and effect of law. The minority also made mention of the Concurring Opinion of Justice Enrique Fernando in *Municipality of Malabang v. Benito*,[12] where it was supposedly made explicit that the operative fact doctrine applies to executive acts, which are ultimately quasi-legislative in nature.

We disagree. For one, neither the *De Agbayani* case nor the *Municipality of Malabang* case elaborates what "executive act" mean. Moreover, while orders, rules and regulations issued by the President or the executive branch have fixed definitions

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[10] Under PARC Resolution No. 89-12-2 dated November 21, 1989, then Secretary Miriam Defensor-Santiago approved the SDP of HLI/Tarlac Development Corporation (Tadeco).

[11] G.R. No. L-23127, April 29, 1971, 38 SCRA 429.

[12] G.R. No. L-28113, March 28, 1969, 27 SCRA 533.

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and meaning in the Administrative Code and jurisprudence, the phrase "executive act" does not have such specific definition under existing laws. It should be noted that in the cases cited by the minority, nowhere can it be found that the term "executive act" is confined to the foregoing. Contrarily, the term "executive act" is broad enough to encompass decisions of administrative bodies and agencies under the executive department which are subsequently revoked by the agency in question or nullified by the Court.

A case in point is the concurrent appointment of Magdangal B. Elma (Elma) as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) which was declared unconstitutional by this Court in *Public Interest Center, Inc. v. Elma*.[13] In said case, this Court ruled that the concurrent appointment of Elma to these offices is in violation of Section 7, par. 2, Article IX-B of the 1987 Constitution, since these are incompatible offices. Notably, the appointment of Elma as Chairman of the PCGG and as CPLC is, without a question, an executive act. Prior to the declaration of unconstitutionality of the said executive act, certain acts or transactions were made in good faith and in reliance of the appointment of Elma which cannot just be set aside or invalidated by its subsequent invalidation.

In *Tan v. Barrios*,[14] this Court, in applying the operative fact doctrine, held that despite the invalidity of the jurisdiction of the military courts over civilians, certain operative facts must be acknowledged to have existed so as not to trample upon the rights of the accused therein. Relevant thereto, in *Olaguer v. Military Commission No. 34*,[15] it was ruled that "military tribunals pertain to the Executive Department of the Government and are simply instrumentalities of the executive power, provided by the legislature for the President as Commander-in-Chief to aid him in properly commanding the army and navy and enforcing

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[13] G.R. No. 138965, June 30, 2006, 494 SCRA 53.

[14] G.R. Nos. 85481-82, October 18, 1990, 190 SCRA 686.

[15] G.R. Nos. 54558 and 69882, May 22, 1987, 150 SCRA 144.

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discipline therein, and utilized under his orders or those of his authorized military representatives."[16]

Evidently, the operative fact doctrine is not confined to statutes and rules and regulations issued by the executive department that are accorded the same status as that of a statute or those which are quasi-legislative in nature.

Even assuming that *De Agbayani* initially applied the operative fact doctrine only to executive issuances like orders and rules and regulations, said principle can nonetheless be applied, by analogy, to decisions made by the President or the agencies under the executive department. This doctrine, in the interest of justice and equity, can be applied liberally and in a broad sense to encompass said decisions of the executive branch. In keeping with the demands of equity, the Court can apply the operative fact doctrine to acts and consequences that resulted from the reliance not only on a law or executive act which is quasi-legislative in nature but also on decisions or orders of the executive branch which were later nullified. This Court is not unmindful that such acts and consequences must be recognized in the higher interest of justice, equity and fairness.

Significantly, a decision made by the President or the administrative agencies has to be complied with because it has the force and effect of law, springing from the powers of the President under the Constitution and existing laws. Prior to the nullification or recall of said decision, it may have produced acts and consequences in conformity to and in reliance of said decision, which must be respected. It is on this score that the operative fact doctrine should be applied to acts and consequences that resulted from the implementation of the PARC Resolution approving the SDP of HLI.

More importantly, respondents, and even the minority, failed to clearly explain how the option to remain in HLI granted to individual farmers would result in inequity and prejudice. We can only surmise that respondents misinterpreted the option as

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[16] *Id.* at 159.

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a referendum where all the FWBs will be bound by a majority vote favoring the retention of all the 6,296 FWBs as HLI stockholders. Respondents are definitely mistaken. The *fallo* of Our July 5, 2011 Decision is unequivocal that only those FWBs who signified their desire to remain as HLI stockholders are entitled to 18,804.32 shares each, while those who opted not to remain as HLI stockholders will be given land by DAR. Thus, referendum was not required but only individual options were granted to each FWB whether or not they will remain in HLI.

The application of the operative fact doctrine to the FWBs is not iniquitous and prejudicial to their interests but is actually beneficial and fair to them. *First*, they are granted the right to remain in HLI as stockholders and they acquired said shares without paying their value to the corporation. On the other hand, the qualified FWBs are required to pay the value of the land to the Land Bank of the Philippines (LBP) if land is awarded to them by DAR pursuant to RA 6657. If the qualified FWBs really want agricultural land, then they can simply say no to the option. And *second*, if the operative fact doctrine is not applied to them, then the FWBs will be required to return to HLI the 3% production share, the 3% share in the proceeds of the sale of the 500-hectare converted land, and the 80.51-hectare Subic-Clark-Tarlac Expressway (SCTEX) lot, the homelots and other benefits received by the FWBs from HLI. With the application of the operative fact doctrine, said benefits, homelots and the 3% production share and 3% share from the sale of the 500-hectare and SCTEX lots shall be respected with no obligation to refund or return them. The receipt of these things is an operative fact "that can no longer be disturbed or simply ignored."

(b) The Operative Fact Doctrine as Recourse in Equity

As mentioned above, respondents contend that the operative fact doctrine is a rule of equity which may be applied only in the absence of a law, and that in the instant case, there is a positive law which mandates the distribution of the land as a result of the revocation of the SDP.

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Undeniably, the operative fact doctrine is a rule of equity.[17] As a complement of legal jurisdiction, equity "seeks to reach and complete justice where courts of law, through the inflexibility of their rules and want of power to adapt their judgments to the special circumstances of cases, are incompetent to do so. Equity regards the spirit and not the letter, the intent and not the form, the substance rather than the circumstance, as it is variously expressed by different courts."[18] Remarkably, it is applied only in the absence of statutory law and never in contravention of said law.[19]

In the instant case, respondents argue that the operative fact doctrine should not be applied since there is a positive law, particularly, Sec. 31 of RA 6657, which directs the distribution of the land as a result of the revocation of the SDP. Pertinently, the last paragraph of Sec. 31 of RA 6657 states:

> 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.)

Markedly, the use of the word **"or"** under the last paragraph of Sec. 31 of RA 6657 connotes that the law gives the corporate landowner an "option" to avail of the stock distribution option or to have the SDP approved within two (2) years from the approval of RA 6657. This interpretation is consistent with the well-established principle in statutory construction that "[t]he word or is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily

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[17] *League of Cities of the Phils. v. COMELEC*, G.R. Nos. 176951, 177499 and 178056, August 24, 2010, 628 SCRA 819, 833.

[18] *LCK Industries, Inc. v. Planters Development Bank*, G.R. No. 170606, November 23, 2007, 538 SCRA 634, 652; cited in *Land Bank of the Philippines v. Ong*, G.R. No. 190755, November 24, 2010, 636 SCRA 266, 280.

[19] *Brito, Sr. v. Dianala*, G.R. No. 171717, December 15, 2010.

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implies, as a disjunctive word."[20] In *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*,[21] this Court held:

> Evidently, the letter did not make a demand for the payment of the ₱8,248,657.47 **AND** the return of the equipment; only either one of the two was required. The demand letter was prepared and signed by Atty. Florecita R. Gonzales, presumably petitioner's counsel. As such, the use of **"or"** instead of **"and"** in the letter could hardly be treated as a simple typographical error, bearing in mind the nature of the demand, the amount involved, and the fact that it was made by a lawyer. Certainly Atty. Gonzales would have known that a world of difference exists between "and" and "or" in the manner that the word was employed in the letter.
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> A rule in statutory construction is that the word "or" is a disjunctive term signifying disassociation and independence of one thing from other things enumerated unless the context requires a different interpretation.[22]
>
> **In its elementary sense, "or," as used in a statute, is a disjunctive article indicating an alternative. It often connects a series of words or propositions indicating a choice of either. When "or" is used, the various members of the enumeration are to be taken separately.**[23]
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> The word "or" is a disjunctive term signifying disassociation and independence of one thing from each of the other things enumerated.[24] (Emphasis in the original.)

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[20] *Saludaga v. Sandiganbayan*, G.R. No. 184537, April 23, 2010, 619 SCRA 364, 374; citing AGPALO, STATUTORY CONSTRUCTION, 2003 p. 204 and *The Heirs of George Poe v. Malayan Insurance Company, Inc.*, G.R. No. 156302, April 7, 2009.

[21] G.R. No. 142618, July 12, 2007, 527 SCRA 405, 422.

[22] Citing *Pimentel v. COMELEC*, G.R. No. 126394, April 24, 1998, 289 SCRA 586, 597.

[23] Citing *Centeno v. Villalon-Pornillos*, G.R. No. 113092, September 1, 1994, 236 SCRA 197, 206.

[24] Citing *Castillo-Co v. Barbers*, G.R. No. 129952, June 16, 1998, 290 SCRA 717, 723.

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Given that HLI secured approval of its SDP in November 1989, well within the two-year period reckoned from June 1988 when RA 6657 took effect, then HLI did not violate the last paragraph of Sec. 31 of RA 6657. Pertinently, said provision does not bar Us from applying the operative fact doctrine.

Besides, it should be recognized that this Court, in its July 5, 2011 Decision, affirmed the revocation of Resolution No. 89-12-2 and ruled for the compulsory coverage of the agricultural lands of Hacienda Luisita in view of HLI's violation of the SDP and DAO 10. By applying the operative fact doctrine, this Court merely gave the qualified FWBs the option to remain as stockholders of HLI and ruled that they will retain the homelots and other benefits which they received from HLI by virtue of the SDP.

It bears stressing that the application of the operative fact doctrine by the Court in its July 5, 2011 Decision is favorable to the FWBs because not only were the FWBs allowed to retain the benefits and homelots they received under the stock distribution scheme, they were also given the option to choose for themselves whether they want to remain as stockholders of HLI or not. This is in recognition of the fact that despite the claims of certain farmer groups that they represent the qualified FWBs in Hacienda Luisita, none of them can show that they are duly authorized to speak on their behalf. As We have mentioned, "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."

II. Constitutionality of Sec. 31, RA 6657

FARM insists that the issue of constitutionality of Sec. 31 of RA 6657 is the *lis mota* of the case, raised at the earliest opportunity, and not to be considered as moot and academic.[25]

This contention is unmeritorious. As We have succinctly discussed in Our July 5, 2011 Decision:

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[25] FARM MR, pp. 6-11, 30-36.

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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. 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. The unyielding rule has been to avoid, whenever plausible, an issue assailing the constitutionality of a statute or governmental act. If some other

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grounds exist by which judgment can be made without touching the constitutionality of a law, such recourse is favored. *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.

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 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, 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. (Citations omitted; emphasis in the original.)

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Based on the foregoing disquisitions, We maintain that this Court is NOT compelled to rule on the constitutionality of Sec. 31 of RA 6657. In this regard, We clarify that this Court, in its July 5, 2011 Decision, made no ruling in favor of the constitutionality of Sec. 31 of RA 6657. There was, however, a determination of the existence of an apparent grave violation of the Constitution that may justify the resolution of the issue of constitutionality, to which this Court ruled in the negative. Having clarified this matter, all other points raised by both FARM and AMBALA concerning the constitutionality of RA 6657 deserve scant consideration.

III. Coverage of Compulsory Acquisition

FARM argues that this Court ignored certain material facts when it limited the maximum area to be covered to 4,915.75 hectares, whereas the area that should, at the least, be covered is 6,443 hectares,[26] which is the agricultural land allegedly covered by RA 6657 and previously held by Tarlac Development Corporation (Tadeco).[27]

We cannot subscribe to this view. Since what is put in issue before the Court is the propriety of the revocation of the SDP, which only involves 4,915.75 has. of agricultural land and not 6,443 has., then We are constrained to rule only as regards the 4,915.75 has. of agricultural land.

Moreover, as admitted by FARM itself, this issue was raised for the first time by FARM in its Memorandum dated September 24, 2010 filed before this Court.[28] In this regard, it should be noted that "[a]s a legal recourse, the special civil action of *certiorari* is a limited form of review."[29] The *certiorari* jurisdiction of this Court is narrow in scope as it is restricted to

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[26] *Id.* at 52.

[27] *Id.*

[28] *Id.*

[29] *Apostol v. CA*, G.R. No. 141854, October 15, 2008, 569 SCRA 80, 92; citing *Almuete v. Andres*, 421 Phil. 522, 531 (2001).

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resolving errors of jurisdiction and grave abuse of discretion, and not errors of judgment.[30] To allow additional issues at this stage of the proceedings is violative of fair play, justice and due process.[31]

Nonetheless, it should be taken into account that this should not prevent the DAR, under its mandate under the agrarian reform law, from subsequently subjecting to agrarian reform other agricultural lands originally held by Tadeco that were allegedly not transferred to HLI but were supposedly covered by RA 6657.

DAR, however, contends that the declaration of the area[32] to be awarded to each FWB is too restrictive. It stresses that in agricultural landholdings like Hacienda Luisita, there are roads, irrigation canals, and other portions of the land that are considered commonly-owned by farmworkers, and this may necessarily result in the decrease of the area size that may be awarded per FWB.[33] DAR also argues that the July 5, 2011 Decision of this Court does not give it any leeway in adjusting the area that may be awarded per FWB in case the number of actual qualified FWBs decreases.[34]

The argument is meritorious. In order to ensure the proper distribution of the agricultural lands of Hacienda Luisita per qualified FWB, and considering that matters involving strictly the administrative implementation and enforcement of agrarian

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[30] *Id.*; citing *Tolentino v. People*, G.R. No. 170396, August 31, 2006, 500 SCRA 721, 724 and *Suyat, Jr. v. Torres*, G.R. No. 133530, October 25, 2004, 441 SCRA 265, 274-275.

[31] See *C.F. Sharp Crew Management, Inc. v. Espanol, Jr.*, G.R. No. 155903, September 14, 2007, 533 SCRA 424, 438-439.

[32] We stated in Our July 5, 2011 Decision that if a qualified FWB will choose land distribution, he or she will get 6,886.5 square meters of agricultural land in Hacienda Luisita.

[33] DAR MR, p. 37.

[34] *Id.*

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reform laws are within the jurisdiction of the DAR,[35] it is the latter which shall determine the area with which each qualified FWB will be awarded.

(a) Conversion of Agricultural Lands

AMBALA insists that the conversion of the agricultural lands violated the conditions of RA 6657 and DAO 10, stating that "keeping the land intact and unfragmented is one of the essential conditions of [the] SD[P], RA 6657 and DAO 10."[36] It asserts that "this provision or conditionality is not mere decoration and is intended to ensure that the farmers can continue with the tillage of the soil especially since it is the only occupation that majority of them knows."[37]

We disagree. As We amply discussed in Our July 5, 2011 Decision:

> 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

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[35] See *Soriano v. Bravo*, G.R. No. 152086, December 15, 2010, 638 SCRA 403, 420.

[36] AMBALA MR, p. 67.

[37] *Id*.

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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."[38]

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

Moreover, it is worth noting that the application for conversion had the backing of 5,000 or so FWBs, including respondents Rene Galang, and Jose Julio Suniga, then leaders of the AMBALA and the Supervisory Group, respectively, as evidenced by the Manifesto of Support they signed and which was submitted to the DAR.[39] If at all, this means that AMBALA should be estopped from questioning the conversion of a portion of Hacienda Luisita, which its leader has fully supported.

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

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

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(b) LIPCO and RCBC as Innocent Purchasers for Value

The AMBALA, Rene Galang and the FARM are in accord that Rizal Commercial Banking Corporation (RCBC) and Luisita Industrial Park Corporation (LIPCO) are not innocent purchasers for value. The AMBALA, in particular, argues that LIPCO, being a wholly-owned subsidiary of HLI, is conclusively presumed to have knowledge of the agrarian dispute on the subject land and could not feign ignorance of this fact, especially since they have the same directors and stockholders.[40] This is seconded by Rene Galang and AMBALA, through the PILC, which intimate that a look at the General Information Sheets of the companies involved in the transfers of the 300-hectare portion of Hacienda Luisita, specifically, Centennary Holdings, Inc. (Centennary), LIPCO and RCBC, would readily reveal that their directors are interlocked and connected to Tadeco and HLI.[41] Rene Galang and AMBALA, through the PILC, also allege that "with the clear-cut involvement of the leadership of all the corporations concerned, LIPCO and RCBC cannot feign ignorance that the parcels of land they bought are under the coverage of the comprehensive agrarian reform program [CARP] and that the conditions of the respective sales are imbued with public interest where normal property relations in the Civil Law sense do not apply."[42]

Avowing that the land subject of conversion still remains undeveloped, Rene Galang and AMBALA, through the PILC, further insist that the condition that "[t]he development of the land should be completed within the period of five [5] years from the issuance of this Order" was not complied with. AMBALA also argues that since RCBC and LIPCO merely stepped into the shoes of HLI, then they must comply with the conditions imposed in the conversion order.[43]

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[40] AMBALA MR, p. 76.

[41] Galang MR, p. 21.

[42] *Id.* at 22.

[43] AMBALA MR, p. 72.

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In addition, FARM avers that among the conditions attached to the conversion order, which RCBC and LIPCO necessarily have knowledge of, are (a) that its approval shall in no way amend, diminish, or alter the undertaking and obligations of HLI as contained in the [SDP] approved on November 21, 1989; and (b) that the benefits, wages and the like, received by the FWBs shall not in any way be reduced or adversely affected, among others.[44]

The contentions of respondents are wanting. In the first place, there is no denying that RCBC and LIPCO knew that the converted lands they bought were under the coverage of CARP. Nevertheless, as We have mentioned in Our July 5, 2011 Decision, this does not necessarily mean that both LIPCO and RCBC already acted in bad faith in purchasing the converted lands. As this Court explained:

> 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." 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

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[44] FARM MR, p. 94.

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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. (Emphasis supplied.)

In the second place, the allegation that the converted lands remain undeveloped is contradicted by the evidence on record, particularly, Annex "X" of LIPCO's Memorandum dated September 23, 2010,[45] which has photographs showing that the land has been partly developed.[46] Certainly, it is a general rule that the factual findings of administrative agencies are conclusive and binding on the Court when supported by substantial evidence.[47] However, this rule admits of certain exceptions, one of which is when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.[48]

In the third place, by arguing that the companies involved in the transfers of the 300-hectare portion of Hacienda Luisita have interlocking directors and, thus, knowledge of one may

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[45] *Rollo*, Vol. 3, pp. 3280-3323.

[46] *Id.* at 3428-3468.

[47] *Nicolas v. Del-Nacia Corp.*, G.R. No. 158026, April 23, 2008, 552 SCRA 545, 556.

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

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already be imputed upon all the other companies, AMBALA and Rene Galang, in effect, want this Court to pierce the veil of corporate fiction. However, piercing the veil of corporate fiction is warranted "only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one."[49] As succinctly discussed by the Court in *Velarde v. Lopez, Inc.*:[50]

> Petitioner argues nevertheless that jurisdiction over the subsidiary is justified by piercing the veil of corporate fiction. Piercing the veil of corporate fiction is warranted, however, only in cases when the separate legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, such that in the case of two corporations, the law will regard the corporations as merged into one. The rationale behind piercing a corporation's identity is to remove the barrier between the corporation from the persons comprising it to thwart the fraudulent and illegal schemes of those who use the corporate personality as a shield for undertaking certain proscribed activities.
>
> In applying the doctrine of piercing the veil of corporate fiction, the following requisites must be established: (1) control, not merely majority or complete stock control; (2) such control must have been used by the defendant to commit fraud or wrong, to perpetuate the violation of a statutory or other positive legal duty, or dishonest acts in contravention of plaintiff's legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. (Citations omitted.)
>
> Nowhere, however, in the pleadings and other records of the case can it be gathered that respondent has complete control over Sky Vision, not only of finances but of policy and business practice in respect to the transaction attacked, so that Sky Vision had at the time of the transaction no separate mind, will or existence of its own. The existence of interlocking directors, corporate officers and shareholders is not enough justification to pierce the veil of

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[49] *Velarde v. Lopez, Inc.*, G.R. No. 153886, January 14, 2004, 419 SCRA 422, 431-432; citing *Tan Boon Bee & Co., Inc. v. Jarencio*, 163 SCRA 205 (1988) and *Yutivo Sons Hardware Co. v. CTA*, 1 SCRA 160 (1961).

[50] *Id.*

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corporate fiction in the absence of fraud or other public policy considerations.

Absent any allegation or proof of fraud or other public policy considerations, the existence of interlocking directors, officers and stockholders is not enough justification to pierce the veil of corporate fiction as in the instant case.

And in the fourth place, the fact that this Court, in its July 5, 2011 Decision, ordered the payment of the proceeds of the sale of the converted land, and even of the 80.51-hectare land sold to the government, through the Bases Conversion Development Authority, to the qualified FWBs, effectively fulfils the conditions in the conversion order, to wit: (1) that its approval shall in no way amend, diminish, or alter the undertaking and obligations of HLI as contained in the SDP approved on November 21, 1989; and (2) that the benefits, wages and the like, received by the FWBs shall not in any way be reduced or adversely affected, among others.

A view has also been advanced that the 200-hectare lot transferred to Luisita Realty Corporation (LRC) should be included in the compulsory coverage because the corporation did not intervene.

We disagree. Since the 200-hectare lot formed part of the SDP that was nullified by PARC Resolution 2005-32-01, this Court is constrained to make a ruling on the rights of LRC over the said lot. Moreover, the 500-hectare portion of Hacienda Luisita, of which the 200-hectare portion sold to LRC and the 300-hectare portion subsequently acquired by LIPCO and RCBC were part of, was already the subject of the August 14, 1996 DAR Conversion Order. By virtue of the said conversion order, the land was already reclassified as industrial/commercial land not subject to compulsory coverage. Thus, if We place the 200-hectare lot sold to LRC under compulsory coverage, this Court would, in effect, be disregarding the DAR Conversion Order, which has long attained its finality. And as this Court held in *Berboso v. CA*,[51] "Once final and executory, the

[51] G.R. Nos. 141593-94, July 12, 2006, 494 SCRA 583, 602.

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Conversion Order can no longer be questioned." Besides, to disregard the Conversion Order through the revocation of the approval of the SDP would create undue prejudice to LRC, which is not even a party to the proceedings below, and would be tantamount to deprivation of property without due process of law.

Nonetheless, the minority is of the adamant view that since LRC failed to intervene in the instant case and was, therefore, unable to present evidence supporting its good faith purchase of the 200-hectare converted land, then LRC should be given full opportunity to present its case before the DAR. This minority view is a contradiction in itself. Given that LRC did not intervene and is, therefore, not a party to the instant case, then it would be incongruous to order them to present evidence before the DAR. Such an order, if issued by this Court, would not be binding upon the LRC.

Moreover, LRC may be considered to have **waived** its right to participate in the instant petition since it did not intervene in the DAR proceedings for the nullification of the PARC Resolution No. 89-12-2 which approved the SDP.

(c) Proceeds of the sale of the 500-hectare converted land and of the 80.51-hectare land used for the SCTEX

As previously mentioned, We ruled in Our July 5, 2011 Decision that 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 compulsory coverage, then HLI and its subsidiary, Centennary, should be liable to the FWBs for the price received for said lots. Thus:

> 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

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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 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.

HLI, however, takes exception to the above-mentioned ruling and contends that it is not proper to distribute the unspent or unused balance of the proceeds of the sale of the 500-hectare converted land and 80.51-hectare SCTEX lot to the qualified FWBs for the following reasons: (1) the proceeds of the sale belong to the corporation, HLI, as corporate capital and assets in substitution for the portions of its land asset which were sold to third parties; (2) to distribute the cash sales proceeds of the portions of the land asset to the FWBs, who are stockholders of HLI, is to dissolve the corporation and distribute the proceeds as liquidating dividends without even paying the creditors of the corporation; and (3) the doing of said acts would violate the

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stringent provisions of the Corporation Code and corporate practice.[52]

Apparently, HLI seeks recourse to the Corporation Code in order to avoid its liability to the FWBs for the price received for the 500-hectare converted lot and the 80.51-hectare SCTEX lot. However, as We have established in Our July 5, 2011 Decision, the rights, obligations and remedies of the parties in the instant case are primarily governed by RA 6657 and HLI cannot shield itself from the CARP coverage merely under the convenience of being a corporate entity. In this regard, it should be underscored that the agricultural lands held by HLI by virtue of the SDP are no ordinary assets. These are special assets, because, originally, these should have been distributed to the FWBs were it not for the approval of the SDP by PARC. Thus, the government cannot renege on its responsibility over these assets. Likewise, HLI is no ordinary corporation as it was formed and organized precisely to make use of these agricultural lands actually intended for distribution to the FWBs. Thus, it cannot shield itself from the coverage of CARP by invoking the Corporation Code. As explained by the Court:

> 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.[53] **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.**

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[52] HLI MR, pp. 3-4.

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

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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*.[54] 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. (Emphasis supplied.)

Considering that the 500-hectare converted land, as well as the 80.51-hectare SCTEX lot, should have been included in the compulsory coverage were it not for their conversion and valid transfers, then it is only but proper that the price received for the sale of these lots should be given to the qualified FWBs. In effect, the proceeds from the sale shall take the place of the lots.

The Court, in its July 5, 2011 Decision, however, takes into account, *inter alia*, the payment of taxes and expenses relating to the transfer of the land, as well as HLI's statement that most, if not all, of the proceeds were used for legitimate corporate purposes. Accordingly, We ordered the deduction of the taxes and expenses relating to the transfer of titles to the transferees, and the expenditures incurred by HLI and Centennary for legitimate corporate purposes, among others.

On this note, DAR claims that the "[l]egitimate corporate expenses should not be deducted as there is no basis for it,

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[54] *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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especially since only the auditing to be conducted on the financial records of HLI will reveal the amounts to be offset between HLI and the FWBs."[55]

The contention is unmeritorious. The possibility of an offsetting should not prevent Us from deducting the legitimate corporate expenses incurred by HLI and Centennary. After all, the Court has ordered for a proper auditing "[i]n order to determine once and for all whether or not all the proceeds were properly utilized by HLI and its subsidiary, Centennary." In this regard, DAR is tasked to "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." Also, it should be noted that it is HLI which shall shoulder the cost of audit to reduce the burden on the part of the FWBs. Concomitantly, the legitimate corporate expenses incurred by HLI and Centennary, as will be determined by a reputable accounting firm to be engaged by DAR, shall be among the allowable deductions from the proceeds of the sale of the 500-hectare land and the 80.51-hectare SCTEX lot.

We, however, find that the 3% production share should not be deducted from the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare SCTEX lot. The 3% production share, like the homelots, was among the benefits received by the FWBs as farmhands in the agricultural enterprise of HLI and, thus, should not be taken away from the FWBs.

Contrarily, the minority is of the view that as a consequence of the revocation of the SDP, the parties should be restored to their respective conditions prior to its execution and approval, subject to the application of the principle of set-off or compensation. Such view is patently misplaced.

The law on contracts, *i.e.* mutual restitution, does not apply to the case at bar. To reiterate, what was actually revoked by

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[55] DAR MR, p. 33.

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this Court, in its July 5, 2011 Decision, is PARC Resolution No. 89-12-2 approving the SDP. To elucidate, it was the SDP, not the SDOA, which was presented for approval by Tadeco to DAR.[56] The SDP explained the mechanics of the stock distribution but did not make any reference nor correlation to the SDOA. The pertinent portions of the proposal read:

MECHANICS OF STOCK DISTRIBUTION PLAN

Under Section 31 of Republic Act No. 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, Tarlac Development Corporation hereby submits for approval a stock distribution plan that envisions the following**:[57] (Terms and conditions omitted; emphasis supplied)

x x x x x x x x x

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 collective bargaining agreement with management.[58]

Also, PARC Resolution No. 89-12-2 reads as follows:

RESOLUTION APPROVING THE STOCK DISTRIBUTION PLAN OF TARLAC DEVELOPMENT COMPANY/HACIENDA LUISITA INCORPORATED (TDC/HLI)

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[56] As stated in the SDP:

"Under Section 31 of Republic Act No. 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, Tarlac Development Corporation hereby submits for approval a stock distribution plan that envisions the following: x x x" (*Rollo*, p. 1322)

[57] *Rollo*, p. 1322; Annex "AA".

[58] *Id.* at 3747-3748.

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NOW THEREFORE, on motion duly seconded,

RESOLVED, as it is hereby resolved, to approve the stock distribution plan of TDC/HLI.

UNANIMOUSLY APPROVED.[59] (Emphasis supplied)

Clearly, what was approved by PARC is the SDP and not the SDOA. There is, therefore, no basis for this Court to apply the law on contracts to the revocation of the said PARC Resolution.

IV. Just Compensation

In Our July 5, 2011 Decision, We stated that "HLI shall be paid just compensation for the remaining agricultural land that will be transferred to DAR for land distribution to the FWBs." We also ruled that the date of the "taking" is November 21, 1989, when PARC approved HLI's SDP per PARC Resolution No. 89-12-2.

In its *Motion for Clarification and Partial Reconsideration*, HLI disagrees with the foregoing ruling and contends that the "taking" should be reckoned from finality of the Decision of this Court, or at the very least, the reckoning period may be tacked to January 2, 2006, the date when the Notice of Coverage was issued by the DAR pursuant to PARC Resolution No. 2006-34-01 recalling/revoking the approval of the SDP.[60]

For their part, Mallari, *et al*. argue that the valuation of the land cannot be based on November 21, 1989, the date of approval of the SDP. Instead, they aver that the date of "taking" for valuation purposes is a factual issue best left to the determination of the trial courts.[61]

At the other end of the spectrum, AMBALA alleges that HLI should no longer be paid just compensation for the agricultural

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[59] *Id.* at 151.

[60] HLI MR, pp. 18-21.

[61] Mallari, *et al*. MR, pp. 3-4.

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land that will be distributed to the FWBs, since the Manila Regional Trial Court (RTC) already rendered a decision ordering "the Cojuangcos to transfer the control of Hacienda Luisita to the Ministry of Agrarian Reform, which will distribute the land to small farmers after compensating the landowners ₱3.988 million."[62] In the event, however, that this Court will rule that HLI is indeed entitled to compensation, AMBALA contends that it should be pegged at forty thousand pesos (PhP 40,000) per hectare, since this was the same value that Tadeco declared in 1989 to make sure that the farmers will not own the majority of its stocks.[63]

Despite the above propositions, We maintain that the date of "taking" is November 21, 1989, the date when PARC approved HLI's SDP per PARC Resolution No. 89-12-2, in view of the fact that this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition. Further, any doubt should be resolved in favor of the FWBs. As this Court held in *Perez-Rosario v. CA*:[64]

> It is an established social and economic fact that the escalation of poverty is the driving force behind the political disturbances that have in the past compromised the peace and security of the people as well as the continuity of the national order. To subdue these acute disturbances, the legislature over the course of the history of the nation passed a series of laws calculated to accelerate agrarian reform, ultimately to raise the material standards of living and eliminate discontent. Agrarian reform is a perceived solution to social instability. **The edicts of social justice found in the Constitution and the public policies that underwrite them, the extraordinary national experience, and the prevailing national consciousness, all**

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[62] AMBALA MR, p. 70.

[63] *Id.* at 71.

[64] G.R. No. 140796, June 30, 2006, 494 SCRA 66, 92-93.

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command the great departments of government to tilt the balance in favor of the poor and underprivileged whenever reasonable doubt arises in the interpretation of the law. But annexed to the great and sacred charge of protecting the weak is the diametric function to put every effort to arrive at an equitable solution for all parties concerned: the jural postulates of social justice cannot shield illegal acts, nor do they sanction false sympathy towards a certain class, nor yet should they deny justice to the landowner whenever truth and justice happen to be on her side. In the occupation of the legal questions in all agrarian disputes whose outcomes can significantly affect societal harmony, the considerations of social advantage must be weighed, an inquiry into the prevailing social interests is necessary in the adjustment of conflicting demands and expectations of the people, and the social interdependence of these interests, recognized. (Emphasis supplied.)

The minority contends that it is the date of the notice of coverage, that is, January 2, 2006, which is determinative of the just compensation HLI is entitled to for its expropriated lands. To support its contention, it cited numerous cases where the time of the taking was reckoned on the date of the issuance of the notice of coverage.

However, a perusal of the cases cited by the minority would reveal that none of them involved the stock distribution scheme. Thus, said cases do not squarely apply to the instant case. Moreover, it should be noted that it is precisely because the stock distribution option is a distinctive mechanism under RA 6657 that it cannot be treated similarly with that of compulsory land acquisition as these are two (2) different modalities under the agrarian reform program. As We have stated in Our July 5, 2011 Decision, RA 6657 "provides two (2) alternative modalities, *i.e.*, land or stock transfer, pursuant to either of which the corporate landowner can comply with CARP."

In this regard, it should be noted that when HLI submitted the SDP to DAR for approval, it cannot be gainsaid that the stock distribution scheme is clearly HLI's preferred modality in order to comply with CARP. And when the SDP was approved, stocks were given to the FWBs in lieu of land distribution. As aptly observed by the minority itself, "[i]nstead of expropriating

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lands, what the government took and distributed to the FWBs were shares of stock of petitioner HLI in proportion to the value of the agricultural lands that should have been expropriated and turned over to the FWBs." It cannot, therefore, be denied that upon the approval of the SDP submitted by HLI, the agricultural lands of Hacienda Luisita became subject of CARP coverage. Evidently, the approval of the SDP took the place of a notice of coverage issued under compulsory acquisition.

Also, it is surprising that while the minority opines that under the stock distribution option, "title to the property remains with the corporate landowner, ***which should presumably be dominated by farmers with majority stockholdings in the corporation***," it still insists that the just compensation that should be given to HLI is to be reckoned on January 2, 2006, the date of the issuance of the notice of coverage, even after it found that the FWBs did not have the majority stockholdings in HLI contrary to the supposed avowed policy of the law. In effect, what the minority wants is to prejudice the FWBs twice. Given that the FWBs should have had majority stockholdings in HLI but did not, the minority still wants the government to pay higher just compensation to HLI. Even if it is the government which will pay the just compensation to HLI, this will also affect the FWBs as they will be paying higher amortizations to the government if the "taking" will be considered to have taken place only on January 2, 2006.

The foregoing notwithstanding, it bears stressing that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner. The landowner can file an original action with the RTC acting as a special agrarian court to determine just compensation. The court has the right to review with finality the determination in the exercise of what is admittedly a judicial function.[65]

A view has also been advanced that HLI should pay the qualified FWBs rental for the use and possession of the land up

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[65] *Heirs of Lorenzo and Carmen Vidad v. Land Bank of the Philippines*, G.R. No. 166461, April 30, 2010.

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to the time it surrenders possession and control over these lands. What this view fails to consider is the fact that the FWBs are also stockholders of HLI prior to the revocation of PARC Resolution No. 89-12-2. Also, the 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 their Collective Bargaining Agreement. That being so, there would be unjust enrichment on the part of the FWBs if HLI will still be required to pay rent for the use of the land in question.

V. Sale to Third Parties

There is a view that since the agricultural lands in Hacienda Luisita were placed under CARP coverage through the SDOA scheme on May 11, 1989, then the 10-year period prohibition on the transfer of awarded lands under RA 6657 lapsed on May 10, 1999, and, consequently, the qualified FWBs should already be allowed to sell these lands with respect to their land interests to third parties, including HLI, regardless of whether they have fully paid for the lands or not.

The proposition is erroneous. Sec. 27 of RA 6657 states:

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,**

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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. (Emphasis supplied.)

To implement the above-quoted provision, *inter alia*, DAR issued Administrative Order No. 1, Series of 1989 (DAO 1) entitled *Rules and Procedures Governing Land Transactions*. Said Rules set forth the rules on validity of land transactions, to wit:

II. RULES ON VALIDITY OF LAND TRANSACTIONS

A. The following transactions are valid:

1. Those executed by the original landowner in favor of the qualified beneficiary from among those certified by DAR.
2. Those in favor of the government, DAR or the Land Bank of the Philippines.
3. Those covering lands retained by the landowner under Section 6 of R.A. 6657 duly certified by the designated DAR Provincial Agrarian Reform Officer (PARO) as a retention area, executed in favor of transferees whose total landholdings inclusive of the land to be acquired do not exceed five (5) hectares; subject, however, to the right of pre-emption and/or redemption of tenant/lessee under Section 11 and 12 of R.A. 3844, as amended.

x x x x x x x x x

4. Those executed by beneficiaries covering lands acquired under any agrarian reform law in favor of the government, DAR, LBP or other qualified beneficiaries certified by DAR.
5. Those executed **after ten (10) years from the issuance and registration of the Emancipation Patent or Certificate of Land Ownership Award.**

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B. The following transactions are not valid:

1. Sale, disposition, lease management contract or transfer of possession of private lands executed by the original landowner prior to June 15, 1988, which are registered on or before September 13, 1988, or those executed after June 15, 1988, covering an area in excess of the five-hectare retention limit in violation of R.A. 6657.

2. Those covering lands acquired by the beneficiary under R.A. 6657 and executed within ten (10) years from the issuance and registration of an Emancipation Patent or Certificate of Land Ownership Award.

3. Those executed in favor of a person or persons not qualified to acquire land under R.A. 6657.

4. Sale, transfer, conveyance or change of nature of the land outside of urban centers and city limits either in whole or in part as of June 15, 1988, when R.A. 6657 took effect, except as provided for under DAR Administrative Order No. 15, series of 1988.

5. Sale, transfer or conveyance by beneficiary of the right to use or any other usufructuary right over the land he acquired by virtue of being a beneficiary, in order to circumvent the law.

x x x x x x x x x
(Emphasis supplied.)

Without a doubt, under RA 6657 and DAO 1, the awarded lands may only be transferred or conveyed after ten (10) years from the **issuance** and **registration** of the emancipation patent (EP) or certificate of land ownership award (CLOA). Considering that the EPs or CLOAs have not yet been issued to the qualified FWBs in the instant case, the 10-year prohibitive period has not even started. Significantly, the reckoning point is **the issuance of the EP or CLOA**, and **not the placing of the agricultural lands under CARP coverage**.

Moreover, if We maintain the position that the qualified FWBs should be immediately allowed the option to sell or convey the agricultural lands in Hacienda Luisita, then all efforts at agrarian reform would be rendered nugatory by this Court, since, at the

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end of the day, these lands will just be transferred to persons not entitled to land distribution under CARP. As aptly noted by the late Senator Neptali Gonzales during the Joint Congressional Conference Committee on the Comprehensive Agrarian Reform Program Bills:

SEN. GONZALES. **My point is, as much as possible let the said lands be distributed under CARP remain with the beneficiaries and their heirs** because that is the lesson that we have to learn from PD No. 27. If you will talk with the Congressmen representing Nueva Ecija, Pampanga and Central Luzon provinces, law or no law, **you will find out that more than one-third of the original, of the lands distributed under PD 27 are no longer owned, possessed or being worked by the grantees or the awardees of the same, something which we ought to avoid under the CARP bill that we are going to enact.**[66] (Emphasis supplied.)

Worse, by raising that the qualified beneficiaries may sell their interest back to HLI, this smacks of outright indifference to the provision on retention limits[67] under RA 6657, as this

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[66] Joint Congressional Conference Committee on the Comprehensive Agrarian Reform Program Bills, May 26, 1988, pp. 45-46.

[67] SEC. 6. *Retention Limits.* — Except as otherwise provided in this Act, no person may own or retain, directly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-sized farm, such as commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall the retention by the landowner exceed five (5) hectares. Three (3) hectares may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm: *Provided,* That landowners whose lands have been covered by Presidential Decree No. 27 shall be allowed to keep the area originally retained by them thereunder; *Provided, further,* That original homestead grantees or direct compulsory heirs who still own the original homestead at the time of the approval of this Act shall retain the same areas as long as they continue to cultivate said homestead.

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner: *Provided, however,* That in case the area selected for retention by the landowner is tenanted, the tenant shall

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Court, in effect, would be allowing HLI, the previous landowner, to own more than five (5) hectares of agricultural land, which We cannot countenance. There is a big difference between the ownership of agricultural lands by HLI under the stock distribution scheme and its eventual acquisition of the agricultural lands from the qualified FWBs under the proposed buy-back scheme. The rule on retention limits does not apply to the former but only to the latter in view of the fact that the stock distribution scheme is sanctioned by Sec. 31 of RA 6657, which specifically allows corporations to divest a proportion of their capital stock that "the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets." On the other hand, no special rules exist under RA 6657 concerning the proposed buy-back scheme; hence, the general rules on retention limits should apply.

Further, the position that the qualified FWBs are now free to transact with third parties concerning their land interests, regardless of whether they have fully paid for the lands or not, also transgresses the second paragraph of Sec. 27 of RA 6657, which plainly states that "[i]f 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

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have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention.

In all cases, the security of tenure of the farmers or farm workers on the land prior to the approval of this Act shall be respected.

Upon the effectivity of this Act, any sale, disposition, lease, management contract or transfer of possession of private lands executed by the original landowner in violation of this Act shall be null and void: *Provided, however*, That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the DAR within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

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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 x x x." When the words and phrases in the statute are clear and unequivocal, the law is applied according to its express terms.[68] *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[69]

The minority, however, posits that "[t]o insist that the FWBs' rights sleep for a period of ten years is unrealistic, and may seriously deprive them of real opportunities to capitalize and maximize the victory of direct land distribution." By insisting that We disregard the ten-year restriction under the law in the case at bar, the minority, in effect, wants this Court to engage in judicial legislation, which is violative of the principle of separation of powers.[70] The discourse by Ruben E. Agpalo, in his book on statutory construction, is enlightening:

> Where the law is clear and unambiguous, it must be taken to mean exactly what it says and the court has no choice but to see to it that its mandate is obeyed. Where the law is clear and free from doubt or ambiguity, there is no room for construction or interpretation. **Thus, where what is not clearly provided in the law is read into the law by construction because it is more logical and wise, it would be to encroach upon legislative prerogative to define the wisdom of the law, which is judicial legislation. For whether a statute is wise or expedient is not for the courts to determine. Courts must administer the law, not as they think it ought to be but as they find it and without regard to consequences**.[71] (Emphasis supplied.)

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[68] *Commissioner of Internal Revenue v. Central Luzon Drug Corp.*, G.R. No. 148512, June 26, 2006, 492 SCRA 575, 581.

[69] *Philippine Amusement & Gaming Corp. v. Philippine Gaming Jurisdiction, Inc., et al.*, G.R. No. 177333, April 24, 2009, 586 SCRA 658, 664-665.

[70] *Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue*, G.R. Nos. 158885 & 170680, October 2, 2009, 602 SCRA 159, 169.

[71] R.E. Agpalo, *STATUTORY CONSTRUCTION* 125 (5th edition, 2003); citations omitted.

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And as aptly stated by Chief Justice Renato Corona in his Dissenting Opinion in *Ang Ladlad LGBT Party v. COMELEC*:[72]

> Regardless of the personal beliefs and biases of its individual members, this Court can only apply and interpret the Constitution and the laws. Its power is not to create policy but to recognize, review or reverse the policy crafted by the political departments if and when a proper case is brought before it. Otherwise, it will tread on the dangerous grounds of judicial legislation.

Considerably, this Court is left with no other recourse but to respect and apply the law.

VI. Grounds for Revocation of the SDP

AMBALA and FARM reiterate that improving the economic status of the FWBs is among the legal obligations of HLI under the SDP and is an imperative imposition by RA 6657 and DAO 10.[73] FARM further asserts that "[i]f that minimum threshold is not met, why allow [stock distribution option] at all, unless the purpose is not social justice but a political accommodation to the powerful."[74]

Contrary to the assertions of AMBALA and FARM, nowhere in the SDP, RA 6657 and DAO 10 can it be inferred that improving the economic status of the FWBs is among the legal obligations of HLI under the SDP or is an imperative imposition by RA 6657 and DAO 10, a violation of which would justify discarding the stock distribution option. As We have painstakingly explained in Our July 5, 2011 Decision:

> 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.

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[72] G.R. No. 190582, April 8, 2010.

[73] AMBALA MR, pp. 65-66; FARM MR, p. 60.

[74] FARM MR, p. 60.

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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.
>
> 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.

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.

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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 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. 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.

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,

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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.[75] 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. (Citations omitted; emphasis in the original.)

This Court, despite the above holding, still affirmed the revocation by PARC of its approval of the SDP based on the following grounds: (1) failure of HLI to fully comply with its undertaking to distribute homelots to the FWBs under the SDP; (2) distribution of shares of stock to the FWBs based on the number of "man days" or "number of days worked" by the FWB in a year's time; and (3) 30-year timeframe for the implementation or distribution of the shares of stock to the FWBs.

Just the same, Mallari, *et al*. posit that the homelots required to be distributed have all been distributed pursuant to the SDOA, and that what merely remains to be done is the release of title from the Register of Deeds.[76] They further assert that there has been no dilution of shares as the corporate records would show that if ever not all of the 18,804.32 shares were given to the actual original FWB, the recipient of the difference is the next of kin or children of said original FWB.[77] Thus, they submit that since the shares were given to the same "family beneficiary," this should be deemed as substantial compliance with the provisions of Sec. 4 of DAO 10.[78] Also, they argue that there

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

[76] Mallari, *et al*. MR, p. 3.

[77] *Id*.

[78] *Id*.

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has been no violation of the three-month period to implement the SDP as mandated by Sec. 11 of DAO, since this provision must be read in light of Sec. 10 of Executive Order No. 229, the pertinent portion of which reads, "The approval by the PARC of a plan for such stock distribution, and its initial implementation, shall be deemed compliance with the land distribution requirement of the CARP."[79]

Again, the matters raised by Mallari, *et al.* have been extensively discussed by the Court in its July 5, 2011 Decision. As stated:

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:

> 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

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[79] *Id.*

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> 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 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.

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:

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> 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 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**.

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**." 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

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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.

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 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. 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?

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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?

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?

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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 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 said implementation of the stock distribution plan.**

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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.

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.

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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. Consequently, the PARC Resolution No. 89-12-2 dated November 21, l989 approving the HLI's SDP is nullified and voided. (Citations omitted; emphasis in the original.)

Based on the foregoing ruling, the contentions of Mallari, *et al*. are either not supported by the evidence on record or are utterly misplaced. There is, therefore, no basis for the Court to reverse its ruling affirming PARC Resolution No. 2005-32-01 and PARC Resolution No. 2006-34-01, revoking the previous approval of the SDP by PARC.

VII. Control over Agricultural Lands

After having discussed and considered the different contentions raised by the parties in their respective motions, We are now left to contend with one crucial issue in the case at bar, that is, control over the agricultural lands by the qualified FWBs.

Upon a review of the facts and circumstances, We realize that the FWBs will never have control over these agricultural lands for as long as they remain as stockholders of HLI. In Our July 5, 2011 Decision, this Court made the following observations:

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 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

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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. (Emphasis supplied.)

In line with Our finding that control over agricultural lands must always be in the hands of the farmers, We reconsider our ruling that the qualified FWBs should be given an option to remain as stockholders of HLI, inasmuch as these qualified FWBs will never gain control given the present proportion of shareholdings in HLI.

A revisit of HLI's Proposal for Stock Distribution under CARP and the Stock Distribution Option Agreement (SDOA) upon which the proposal was based reveals that the total assets of HLI is PhP 590,554,220, while the value of the 4,915.7466 hectares is PhP 196,630,000. Consequently, the share of the farmer-beneficiaries in the HLI capital stock is 33.296% (196,630,000 divided by 590,554.220); 118,391,976.85 HLI shares represent 33.296%. Thus, even if all the holders of the 118,391,976.85 HLI shares unanimously vote to remain as HLI stockholders, which is unlikely, control will never be placed in the hands of the farmer-beneficiaries. Control, of course, means the majority of 50% plus at least one share of the common shares and other voting shares. Applying the formula to the HLI stockholdings, the number of shares that will constitute the majority is 295,112,101 shares (590,554,220 divided by 2 plus one [1] HLI share). The 118,391,976.85 shares subject to the SDP approved by PARC substantially fall short of the 295,112,101 shares needed by the FWBs to acquire control over HLI. Hence, control can NEVER be attained by the FWBs. There is even no assurance that 100% of the 118,391,976.85 shares issued to the FWBs will all be voted in favor of staying

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in HLI, taking into account the previous referendum among the farmers where said shares were not voted unanimously in favor of retaining the SDP. In light of the foregoing consideration, the option to remain in HLI granted to the individual FWBs will have to be recalled and revoked.

Moreover, bearing in mind that with the revocation of the approval of the SDP, HLI will no longer be operating under SDP and will only be treated as an ordinary private corporation; the FWBs who remain as stockholders of HLI will be treated as ordinary stockholders and will no longer be under the protective mantle of RA 6657.

In addition to the foregoing, in view of the operative fact doctrine, all the benefits and homelots[80] received by all the FWBs shall be respected with no obligation to refund or return them, since, as We have mentioned in our July 5, 2011 Decision, "the benefits x x x 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."

One last point, the HLI land shall be distributed only to the 6,296 original FWBs. The remaining 4,206 FWBs are not entitled to any portion of the HLI land, because the rights to said land were vested only in the 6,296 original FWBs pursuant to Sec. 22 of RA 6657.

In this regard, DAR shall verify the identities of the 6,296 original FWBs, consistent with its administrative prerogative to identify and select the agrarian reform beneficiaries under RA 6657.[81]

WHEREFORE, the *Motion for Partial Reconsideration* dated July 20, 2011 filed by public respondents Presidential Agrarian

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[80] *Rollo*, p. 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.

[81] See *Concha v. Rubio*, G.R. No. 162446, March 29, 2010, 617 SCRA 22, 31.

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Reform Council and Department of Agrarian Reform, the *Motion for Reconsideration* dated July 19, 2011 filed by private respondent Alyansa ng mga Manggagawang Bukid sa Hacienda Luisita, the *Motion for Reconsideration* dated July 21, 2011 filed by respondent-intervenor Farmworkers Agrarian Reform Movement, Inc., and the *Motion for Reconsideration* dated July 22, 2011 filed by private respondents Rene Galang and AMBALA are *PARTIALLY GRANTED with respect to the option granted to the original farmworker-beneficiaries of Hacienda Luisita to remain with Hacienda Luisita, Inc.*, which is hereby *RECALLED* and *SET ASIDE*. The *Motion for Clarification and Partial Reconsideration* dated July 21, 2011 filed by petitioner HLI and the *Motion for Reconsideration* dated July 21, 2011 filed by private respondents Noel Mallari, Julio Suniga, Supervisory Group of Hacienda Luisita, Inc. and Windsor Andaya are *DENIED*.

The *fallo* of the Court's July 5, 2011 Decision is hereby amended and shall read:

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 following modifications:

All salaries, benefits, the 3% of the gross sales of the production of the agricultural lands, the 3% share in the proceeds of the sale of the 500-hectare converted land and the 80.51-hectare SCTEX lot and the homelots already received by the 10,502 FWBs composed of 6,296 original FWBs and the 4,206 non-qualified FWBs shall be respected with no obligation to refund or return them. The 6,296 original FWBs shall forfeit and relinquish their rights over the HLI shares of stock issued to them in favor of HLI. The HLI Corporate Secretary shall cancel the shares issued to the said FWBs and transfer them to HLI in the stocks and transfer book, which transfers shall be exempt from taxes, fees and charges. The 4,206 non-qualified FWBs shall remain as stockholders of HLI.

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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 500-hectare lot subject of the August 14, l996 Conversion Order and the 80.51-hectare lot sold to, or acquired by, the government as part of the SCTEX complex. After the segregation process, as indicated, is done, the remaining area shall be turned over to DAR for immediate land distribution to the original 6,296 FWBs or their successors-in-interest which will be identified by the DAR. The 4,206 non-qualified FWBs are not entitled to any share in the land to be distributed by DAR.

HLI is directed to pay the original 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 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 actually used or spent for legitimate corporate purposes. Any unspent or unused balance and any disallowed expenditures 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 which is the date of issuance of 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 within the first 15 days after the end of each quarter, until fully implemented.

The temporary restraining order is lifted.

SO ORDERED.

Peralta, del Castillo, Abad, and *Perez, JJ.,* concur.

Leonardo-de Castro, J., concurs with Justice Velasco and maintains her vehement disagreement with Justice Sereno's opinion which will put the land beyond the capacity of the farmers to pay, based on her strained construction/interpretation of the law re: date of taking.

Corona, C.J., see concurring and dissenting opinion.

Brion, J., C.J. Corona certifies that he submitted a Concurring and Dissenting Opinion.

Bersamin, J., with concurring and dissenting opinion.

Villarama, Jr., J., joins C.J. R.C. Corona's opinion.

Mendoza, J., maintains his positions in his separate opinion except as to the reckoning date for just compensation. It should be from November 21, 1989.

Sereno, J., see concurring and dissenting opinion.

Reyes and *Perlas-Bernabe, JJ.,* subject to dissenting opinion of Justice Bersamin.

Carpio, J., no part, prior inhibition.

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CONCURRING AND DISSENTING OPINION

CORONA, *C.J.*:

The complete independence of the courts of justice is peculiarly essential to a limited Constitution. By a limited Constitution I understand one which contains certain specified exceptions to the legislative authority .... Limitations of this kind can be preserved in practice no other way than through the medium of the **courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void**. Without this, all the reservations of particular rights or privileges would amount to nothing.[1]

The fundamental standard of agrarian reform is Section 4, Article XIII of the Constitution:

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 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)

It is against this standard that the following provision of Section 31 of RA 6657 (Comprehensive Agrarian Reform Law of 1988) should be tested:

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

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[1] Hamilton, Alexander, The Federalist No. 78 at 521-22, Carl Van Doren ed., 1945.

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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.

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.

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COURT'S DUTY TO CONFRONT THE CONSTITUTIONAL QUESTION

Where a provision of a statute goes against the fundamental law, specially if it impairs basic rights and constitutional values, the Court should not hesitate to strike it down as unconstitutional. In such a case, refusal to address the issue of constitutionality squarely is neither prudence nor restraint but evasion of judicial duty and abdication of the Court's authority.

With this in mind, I register my dissent to the *ponencia*'s resolution of the motions for reconsideration of the July 5, 2011 decision in this case.

The *ponencia* persists to reject an inquiry into the constitutionality of Section 31 of RA 6657 on two grounds: the issue of constitutionality is not the *lis mota* of the case and the issue is already moot.

The Court should not decline to test the constitutional validity of Section 31 of RA 6657 on the basis of either the requirement of *lis mota* or the doctrine of mootness.

The requirement of *lis mota* does not apply where the question of constitutionality was raised by the parties and addressing such question is unavoidable.[2] It cannot be disputed that the parties-in-interest to this case presented the question of constitutionality. Also, any discussion of the stock distribution plan of petitioner Hacienda Luisita, Inc. (HLI) necessarily and inescapably involves a discussion of its legal basis, Section 31 of RA 6657. While the said provision enjoys the presumption of constitutionality, that presumption has precisely been challenged. Its inconsistency with the fundamental law was raised specifically as an issue.

More importantly, considerations of public interest render the issue of the constitutionality of Section 31 of RA 6657 inevitable. Agriculture is historically significant in Philippine society and economy and agrarian reform is historically imbued with public interest. Our constitutional history and tradition show

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[2] *Sotto v. Commission on Elections*, 76 Phil. 516, 522 (1946).

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that agrarian reform has always been a pillar of social justice. Relevantly, the records of the Constitutional Commission show that **Hacienda Luisita has always been viewed as an acid test of genuine agrarian reform**.[3]

Furthermore, the Constitution recognizes the primacy of the right of farmers and farmworkers to directly or collectively own the lands they till. Any artificial or superficial substitute such as the stock distribution plan diminishes the right and debases the constitutional intent. If this Court has the authority to promulgate rules that protect and enforce constitutional rights,[4] it also has the duty to render decisions that ensure constitutional rights are preserved and safeguarded, not diminished or modified.

On the other hand, the invocation of the doctrine of mootness does not provide Section 31 of RA 6657 an unpierceable veil that will prevent the Court from prying into its constitutionality. Indeed, the mootness doctrine admits of several exceptions.[5] I have amply discussed why this case falls under the exceptions in my dissent to the July 5, 2011 decision in this case:

> 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

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[3] *See* Record of the Constitutional Commission, Vol. II, pp. 663-664.

[4] Sec. 5(5), Article VIII, Constitution.

[5] *See Province of North Cotabato v. Government of the Republic of the Philippines*, G.R. No. 183591, 14 October 2008, 568 SCRA 402. "[T]he "moot and academic" principle not being a magical formula that automatically dissuades courts in resolving a case, it will decide cases, otherwise moot and academic, if it finds that (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (d) the case is capable of repetition yet evading review."

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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**. Indeed, a reading of the framers' intent clearly 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.*

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MR. BENNAGEN. *Madam President, nais ko lang dagdagan iyong sagot ni Ginoong Tadeo.* xxx

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

MR. VILLACORTA. xxx Section 5 gives the **opportunity for tillers of the soil to own the land that they till**; xxx

x x x x x x x x x

MR. TADEO. xxx ***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****.* xxx

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. xxx 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?

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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 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****.* xxx (678)

x x x x x x x x x

MR. TADEO. xxx *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.*** xxx (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 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.*, 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.

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

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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 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. 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 opportunity to do so, does not declare that such alternatives are completely against the Constitution?

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Moreover, the requirement of *lis mota* and the mootness doctrine are not constitutional requirements but simply prudential doctrines of justiciability fashioned by the Court in the exercise of judicial restraint. For if the said grounds have been imposed by the Constitution itself, no exception could have been carved by courts (for either ground) as courts only apply and interpret the Constitution and do not modify it.

Judicial review is particularly important in enjoining and redressing constitutional violations inflicted by all levels of government and government officers.[6] Thus, this Court may not be hampered in the performance of its essential function to uphold the Constitution by prudential doctrines of justiciability.

Indeed, in this case, to avoid the constitutional question would be to ignore a violation of the Constitution and to disregard the trampling of basic rights and constitutional values.

CONSTITUTIONAL INFIRMITY OF SECTION 31 OF RA 6657

I maintain my stance that Section 31 of RA 6657 is invalid. Agrarian reform's underlying principle is the recognition of the rights of farmers and farmworkers who are landless to own, directly or collectively, the lands they till. **Under the Constitution, actual land distribution to qualified agrarian reform beneficiaries is mandatory**. Anything that promises something other than land must be struck down for being unconstitutional.

By allowing corporate landholders to continue owning the land by the mere expedient of divesting a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries, Section 31 defeats the right of farmers and regular farmworkers who are landless, under Section 4, Article XIII of the Constitution, to own directly or collectively the lands they till. Section 31 of RA 6657 does not therefore serve the ends of social justice as envisioned under the agrarian reform provisions of the Constitution.

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[6] Chemerinsky, Erwin, Constitutional Law: Principles and Policies, 3rd Edition (2006), p. 52.

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Section 31 of RA 6657 as implemented under the stock distribution option agreement merely entitles farmworker-beneficiaries of petitioner HLI to certificates of stocks which represent equity or interest in the corporate landowner, petitioner HLI, not in the land itself. Under Section 31 of RA 6657, the corporate landowner retains ownership of the agricultural land while the farmworker-beneficiaries become stockholders but remain landless. While farmworker-beneficiaries hold a piece of paper that represents interest in the corporation that has owned and still owns the land, that paper actually deprives them of their rightful claim which is ownership of the land they till. Thus, Section 31 unduly prevents the farmworker-beneficiaries from enjoying the promise of Section 4, Article XIII of the Constitution for them to own directly or collectively the lands they till.

Corporate ownership by the corporate landowner under Section 31 does not satisfy the collective ownership envisioned under Section 4, Article XIII of the Constitution. Where the farmworker-beneficiaries are neither the collective naked owners nor the collective beneficial owners of the land they till, there can be no valid compliance with the Constitution's objective of collective ownership by farmers and farmworkers. Collective ownership of land under the agrarian reform provisions of the Constitution must operate on the concept of collective control of the land by the qualified farmer and farmworkers.

Here, Section 31 of RA 6657 deprives the farmworker-beneficiaries not only of either naked title to or beneficial ownership of the lands they till. It also prevents them from exercising effective control both of the land and of the corporate vehicle as it simply assures beneficiaries "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," "irrespective of the value of their equity in the corporation or association." Thus, while they are given voice in the decision-making process of the corporate landowner with respect to the land, the beneficiaries have no guarantee of control of the lands as they are relegated to the status of minority shareholders.

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CONCOMITANT RIGHTS OF THE FARMWORKERS AND THE LANDOWNER

In view of the unconstitutionality of Section 31 of RA 6657 and the consequent invalidity of the stock distribution option agreement which was based on the said provision, how should the respective rights of the parties be addressed?

Previously, I grudgingly and qualifiedly joined the majority in applying the operative fact doctrine in this case. On further reflection, however, I believe that the operative fact doctrine should not be applied. The operative fact doctrine is a principle fundamentally based on equity. The basis of the application of the said doctrine in this case was the supposed status of the stock distribution option agreement as having been already implemented. However, equity is extended only to one who comes to court with clean hands. Equity should be refused to the iniquitous and guilty of inequity. For this reason, petitioner HLI may not benefit on the ground of equity from its invalid stock distribution option agreement with the farmworker-beneficiaries as it was found guilty of breach of several material terms and conditions of the said agreement.

As Section 31 of RA 6657 is unconstitutional, the stock distribution agreement between petitioner HLI and its farmworker-beneficiaries has no leg to stand on and must perforce be annulled. This means that the agricultural land of petitioner HLI should be deemed placed under compulsory coverage of land reform on November 21, 1989, the date the stock distribution option agreement between petitioner HLI and the farmworker-beneficiaries was approved by the Presidential Agrarian Reform Council (PARC). While PARC could not have validly approved the stock distribution option agreement for lack of legal basis (Section 31 of RA 6657 being unconstitutional), the action of PARC manifested the intent of the government to subject petitioner HLI's land to the land reform program. In other words, the agricultural land of petitioner HLI was subjected to land reform with respect to petitioner HLI, the farmworker-beneficiaries and the government through PARC on November 21, 1989.

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While there could have been no valid approval of the stock distribution agreement, the government's intent to bring the land under the coverage of land reform could nonetheless be deemed implemented by its action as the subject matter of land reform is basically the redistribution of land. The stock distribution option agreement as an invalid means to implement land reform may be considered as simply an accessory to achieving the principal objective of land reform to transfer ownership of land to the farmworker-beneficiaries.

The principal objective and the manifestation of the government's intent to act thereon subsist despite the invalidity of the accessory. Thus, on November 21, 1989, the government should rightly be considered to have pursued the objective of land reform and transferred the ownership of the land to the farmworker-beneficiaries. November 21, 1989 should therefore be deemed as the time of taking of the land from petitioner HLI, as well as the date from which to reckon the just compensation payable to petitioner HLI.

It may, however, be argued that there could have been no taking (in the sense of transferring ownership to the farmworker-beneficiaries) on November 21, 1989 as the land was actually in the possession and control of petitioner HLI. True, petitioner HLI may have continued to possess the land but this did not negate taking and transferring of ownership to the farmworker-beneficiaries on November 21, 1989. From that date, petitioner HLI's status became that of a lawful possessor or one who held the "thing or right to keep or enjoy it, the ownership pertaining to another person,"[7] particularly the farmworker-beneficiaries. Moreover, petitioner HLI should be deemed as a possessor in good faith, or one that is not aware of any flaw in his title or mode of acquisition thereof.[8] Its reliance on the validity of

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[7] Article 525, New Civil Code: "The possession or things or rights may be had in one of two concepts: either in the concept of an owner, or that of the holder of the thing or right to keep or enjoy it, the ownership pertaining to another person."

[8] Article 526, New Civil Code: "He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw

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Section 31 of RA 6657 and, concomitantly, of its stock distribution option agreement could be considered as a mistake on a difficult question of law, a fact which supports its possession in good faith.

While the stock distribution option agreement was supposed to cover only 4,195 hectares of petitioner HLI's land, no such term or condition should be deemed imposed on the coverage of land reform as of November 21, 1989. The limitation of the coverage shall be determined subject only to such priorities and reasonable retention limits prescribed by law, "taking into account ecological, developmental, or equity considerations."[9] The Department of Agrarian Reform (DAR) shall therefore determine the area properly covered by land reform, guided by the retention limits set by law and taking into account ecological, developmental or equity considerations. Upon determination of the area properly covered by land reform, the DAR should immediately and actually distribute the same to the farmworker-beneficiaries. This shall, however, exclude the portion of converted land transferred to LIPCO and RCBC which shall remain with the said transferees as they were transferees (buyers) in good faith. The land distribution shall also exclude the portion expropriated by the government for the SCTEX.

For the excluded portions, however, the farmworker-beneficiaries shall be entitled to the portion of the proceeds of the sale to LIPCO and RCBC corresponding to the market value thereof as of November 21, 1989. It would be unfair to rule otherwise as any increase in value of the land may reasonably be attributed to the improvements thereon made by petitioner HLI and petitioner HLI's efforts to have the said portion reclassified to industrial land. Moreover, this would be in consonance with the rule that "the possessor in good faith is entitled to the fruits received before the possession is legally interrupted."[10]

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which invalidates it. x x x Mistake upon a doubtful or difficult question of law may be the basis of good faith."

[9] Section 4, Article XIII, Constitution.

[10] Article 544, New Civil Code.

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The amount accruing to the farmworker-beneficiaries shall also be less the 3% of the proceeds already given to them. On the other hand, the proceeds of the portion expropriated for the SCTEX shall accrue to the farmworker-beneficiaries.

Indeed, Section 4, Article XIII of the Constitution requires that the landowner be given just compensation. For this purpose, the DAR shall determine the just compensation payable by each farmworker-beneficiary to petitioner HLI as it has jurisdiction in matters involving the administrative implementation and enforcement of agrarian reform laws.[11] The just compensation shall be based on the market value as of November 21, 1989 of the entire portion that may be determined by the DAR as subject to the coverage of land reform. The portion of the proceeds of the portion sold to LIPCO and RCBC as well as the proceeds of the portion expropriated for the SCTEX may be the subject of legal compensation or set off for purposes of the payment of just compensation.

Finally, the farmworker-beneficiaries shall return the shares of stock which they received to petitioner HLI under the invalid stock distribution option agreement.

WHEREFORE, I vote that the Court's July 5, 2011 decision be **RECONSIDERED**. 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**.

The land of petitioner HLI subject to agrarian reform, as determined by the DAR, should be immediately and actually distributed to the farmworker-beneficiaries, except the (a) portion of converted land transferred to LIPCO and RCBC which shall remain with the said transferees as they were transferees (buyers) in good faith and the (b) portion of land expropriated by the government for the SCTEX.

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[11] See *Soriano v. Bravo*, G.R. No. 152086, 15 December 2010, 638 SCRA 403.

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The farmworker-beneficiaries should return the shares of stock which they received to petitioner HLI under the invalid stock distribution option agreement. Each of them should also be liable to pay petitioner HLI just compensation in the amount to be determined by the DAR based on the fair market value of the land as of November 21, 1989. This may be subject to set-off or legal compensation with the amounts accruing to the farmworker-beneficiaries, namely, (a) the portion of the proceeds of the sale to LIPCO and RCBC corresponding to the market value thereof as of November 21, 1989 and (b) the proceeds of the portion expropriated for the SCTEX shall accrue to the farmworker-beneficiaries.

SEPARATE CONCURRING AND DISSENTING OPINION

BRION, *J.*:

In the Court's Decision dated July 5, 2011, the crucial questions that the Court resolved were: (1) whether the Presidential Agrarian Reform Council (*PARC*) has the power to revoke or recall its approval of a stock distribution option entered into between a corporate landowner and its farmworkers-beneficiaries (*FWBs*), under Section 31 of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law (*CARL*); and (2) whether the PARC has a ground to revoke or recall the stock distribution plan (*SDP*) between petitioner Hacienda Luisita, Incorporated (*HLI*) and its FWBs.

The Court was unanimous in declaring that the PARC's express power to approve the plan for stock distribution of corporate landowners, under Section 31 of the CARL, includes the implied power to revoke its approval. In the case of HLI, the majority of the Court, myself included, found that the PARC has solid bases to revoke its approval of HLI's SDP.[1]

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[1] The majority ruled that the SDP/Stock Distribution Option Agreement is contrary to law due to the "man days" method it adopted in computing the number of shares that each FWB shall be entitled to, and the extended period of 30 years to complete the distribution of shares; see July 5, 2011 Decision, pp. 67-72.

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In view of this ruling, the corollary issue of the **effects of the revocation arose**, and **it was at this point that I diverged from the majority's position**. The majority — speaking through Justice Velasco — found it equitable to recognize the existence of certain "operative facts," notwithstanding the revocation of the SDP. Hence, the majority gave the qualified FWBs the option of choosing whether or not to remain as HLI stockholders. On the same principle, the majority authorized the FWBs to retain all benefits received under the SDP. The dispositive of the July 5, 2011 Decision, thus, decreed that:

1. the qualified FWBs, totaling 6,296, are given the option to choose whether to remain as stockholders of HLI or not. Should they choose to remain, they are entitled to 18,804.32 shares each; otherwise, they are entitled to land distribution. The non-qualified FWBs totaling 4,206, however, are not given this option, but are allowed to retain the shares already received;
2. all the 10,502 FWBs are entitled to retain the following items they received on account of the SDP:
   a. salaries and benefits,
   b. 3% production share,
   c. 3% share of the proceeds of the sale of the 500 hectares of converted land and the 80-hectare Subic-Clark-Tarlac Expressway (*SCTEX*) lot, and
   d. 6,886.5-square meter homelots that each FWB received;
3. From the 4,915.75 hectares of agricultural land shall be segregated:
   a. the 500 hectares of converted land acquired by Luisita Industrial Park Corporation (*LIPCO*)/Rizal Commercial Banking Corporation (*RCBC*) and Luisita Realty Corporation (*LRC*);
   b. the 80 hectares of land expropriated by the government for the SCTEX; and

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c. the aggregate area of homelots of FWBs who choose to remain as HLI stockholders.[2]

After segregation, the remaining areas shall be turned over by HLI to the Department of Agrarian Reform (*DAR*) for land distribution to qualified FWBs who prefer land distribution over stock ownership.

4. HLI is directed to turn over the consideration of

a. ₱500 million from the sale of the 200 hectares of converted land to LRC,

b. ₱750 million from the sale of the 300 hectares of converted land to Centennary Holdings, Inc. (Centennary), and

c. ₱80 million from the expropriation of 80 hectares for the SCTEX.

From the sum total of ₱1.33 billion shall be deducted

a. the 3% production share,

b. the 3% share in the proceeds of the sale of the 500-hectare converted land and expropriation of the 80-hectare land,

c. the taxes and expenses relating to the transfer of titles, and

d. the expenditures incurred by HLI for legitimate corporate purposes.

The remaining balance shall be distributed among the qualified FWBs, and

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[2] The July 5, 2011 Decision, pp. 88-89 referred to the "aggregate area of 6,886.5 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 stockholder" as among those to be segregated from the 4,915.75 hectares of land (and thus not subject to compulsory land distribution). I believe that the *ponencia* was referring instead to the homelots of FWBs who opted to remain as stockholders of HLI, as may be apparent from its subsequent statement that "the aforementioned area composed of 6,886.5-square meter lots allotted to the FWBs who stayed with the corporation shall form part of the HLI assets."

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5. HLI shall be paid just compensation for the agricultural land that will be subject to land distribution, the amount of which shall be determined by the DAR.

I dissented from the majority's determination of the effects of the revocation, objecting primarily to their application of the "operative fact doctrine" to justify the option given to the FWBs on whether or not to remain as HLI stockholders. I opined that the revocation of the PARC's approval of the SDP carried with it the nullification of the Stock Distribution Option Agreement (*SDOA*) between HLI and the qualified FWBs. **As a consequence of the nullification, restitution should take place, and the parties are to account and restore what they received from one another. Subject to certain adjustments, I maintain the same view regarding the inapplicability of the operative fact doctrine to the present case**. Based on this perspective, I propose to dispose of the case as discussed below.

The application of the Operative Fact Doctrine to "Executive Acts"

The *ponencia* misapplies the operative fact doctrine. I maintain the view that the doctrine is applicable only in considering the effects of a declaration of unconstitutionality of a **law** (a generic term that includes statutes, rules and regulations issued by the executive department and are accorded the same status as a statute). The doctrine's limited application is apparent from a review of its origins.

The **doctrine of operative fact** is of American origin, first discussed in the 1940 case of *Chicot County Drainage Dist. v. Baxter States Bank*.[3] Chicot Country sought to resist the Baxter States Bank's claim by raising a debt readjustment decree issued by a district court pursuant to *a law enacted by the US Congress*.[4] The Baxter States Bank countered that the readjustment decree

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[3] 308 US 317, 318-319, 60 S. Ct. 317.

[4] In particular, the Act of May 24, 1934 (48 Stat. 798), amending the Bankruptcy Act of July 1, 1898, see *Ashton v. Cameron County Water Imp. Dist. No. 1*, 298 U.S. 513 (1936).

was no longer binding, as the law upon which the decree was based has been declared unconstitutional. The lower court sustained the Baxter States Bank's argument, following the void *ab initio* doctrine[5] laid down in the 1886 case of *Norton v. Shelby County*.[6] The US Supreme Court reversed the decision and ordered the remand of the case, rejecting the broad application of the void *ab initio* doctrine through this rationalization:

> **[T]he effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a *statute*, prior to such a determination, 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 relations, individual and corporate, and 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 x x x and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified. [italics and emphasis ours]

Notably, *Chicot* and the numerous cases that followed its lead applied the "operative fact doctrine" **only** in considering **the effects of a declaration of unconstitutionality of a *statute***.

De Agbayani v. Philippine National Bank (*PNB*),[7] promulgated in this jurisdiction in 1971, was the first instance when the "operative fact doctrine" was extended to consider the effects of a declaration of unconstitutionality of an "executive act." The *ponencia* cites *De Agbayani* (as well as subsequent cases

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[5] The void *ab initio* doctrine declares that an "unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed"; *infra* note 6.

[6] 118 US 425, 442.

[7] No. L-23127, April 29, 1971, 38 SCRA 429.

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that echoed the "operative fact" principle) to support its position, but this reliance proceeds from a misreading of the context in which *De Agbayani* used the term "executive act."

The executive act referred to in *De Agbayani* was Executive Order No. 32 (*EO 32*) issued by then President Sergio Osmeña in March 10, 1945, which imposed a debt moratorium. Since the Court (in the case of *Rutter v. Esteban*[8]) already declared EO 32 unconstitutional, Francisco de Agbayani contended that the PNB's action for foreclosure against him had already prescribed. The Court was then confronted with the issue of whether to give effect to EO 32 prior to the declaration of its unconstitutionality. The Court, *per Justice Enrique Fernando*, resolved the issue in this manner:

> 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 [Article 7] 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.
>
> Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that **prior to the declaration of nullity <u>such challenged legislative or executive act</u> 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

[8] 93 Phil. 68 (1953).

nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental 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.[9]

When these paragraphs are read together, the phrase "such challenged legislative or executive act" quite obviously pertains to the "administrative or executive *acts, orders and regulations*" mentioned in Article 7 of the Civil Code. Thus, **the context in which the term "executive act" was used in *De Agbayani* referred to only executive issuances (acts, orders, rules and regulations) that have the force and effect of laws; it was not used to refer to *any act* performed by the Executive Department.** *De Agbayani's* extension of the operative fact doctrine, therefore, more properly refers only to the recognition of the effects of a declaration of unconstitutionality of *executive issuances*, and *not to all executive acts* as the *ponencia* loosely construes the term. The limited construction of an "executive act," *i.e.*, executive issuances, is actually more consistent with **the rationale behind the operative fact doctrine: the presumption of constitutionality of laws**. Accordingly, it is only to this kind of executive action that the operative fact doctrine can apply.

In my separate opinion to the July 5, 2011 Decision, I raised the propriety of applying the operative fact doctrine to the present case, primarily to object to the option granted by the *ponencia* to the qualified FWBs of whether to remain as HLI stockholders or not. Although in the present Resolution, the *ponencia* reconsidered and has now withdrawn the option given to the qualified FWBs to remain as HLI stockholders, **it still relied on the operative fact doctrine to justify the FWBs retention of certain benefits arising from the revoked SDP:**

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[9] *Id.* at 434-435.

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With the application of the operative fact doctrine, said **benefits, homelots and the 3% production share and the 3% share from the sale of the 500-hectare and SCTEX lots shall be respected with no obligation to refund or return them**. The receipt of these things is an operative fact "that can no longer be disturbed or simply ignored."[10] (emphasis ours)

Because of this continued (*and mistaken*) reliance on the operative fact doctrine, I regretfully have to register my continued objection to the manner by which the *ponencia* proposes to dispose of this case.

Indeed, much of the confusion that arose in the disposition of this case stemmed from the varying perspectives taken by the members of the Court on **what are the effects of the revocation** and **when these effects should accrue**. The revocation of the SDP amounts to the nullification of the SDOA, and the logical and legal consequence of this should be the restoration of the parties to their *respective situations prior to the execution of the nullified agreement*. There should be no question that the PARC's revocation of the approval of the SDP carried with it the nullification of the SDOA because the PARC's approval is necessary to the validity of the SDOA[11]; accordingly, the effects of the revocation should be deemed to have taken place on **November 21, 1989**, the date when PARC Resolution No. 89-12-2 approving the SDP was issued. To consider any other date (either at the time PARC Resolution No. 2005-32-01, revoking its approval of the SDP, was issued or at the time this Court's decision becomes final) is not only iniquitous for the parties but also preposterous under the law. Hence, to accomplish a complete, orderly, and fair disposition of the case, we have to consider the effects of the revocation

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[10] Resolution, p. 11.

[11] This is inferable from Section 31 of the CARL, the relevant portion of which declares, "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."

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to accrue from November 21, 1989. The Court should decree that compulsory Comprehensive Agrarian Reform Program coverage should start at this point in time, and then proceed to adjust the relations of the parties with due regard to the intervening events that transpired.[12]

Treatment of the Sale of the Converted Land

Since the effects of the revocation are deemed to have taken place on November 21, 1989, the entire 4,915.75 hectares of agricultural land should be considered as placed under compulsory coverage as of this time. To declare (as the *ponencia* does[13]) that 500 hectares of the subject land can no longer be included under the CARL's compulsory coverage because it had already been converted into industrial land[14] is erroneous, as this implies that the land was placed under compulsory coverage only when revocation of the SDP was declared, not in 1989. If this was the case then, the FWBs should not be entitled to any of the proceeds of the sale of the 500 hectares of converted land because their right to these proceeds stems from their right to own the land which accrues only when the land is placed under compulsory coverage. Oddly enough, the *ponencia* takes an inconsistent position by subsequently declaring that —

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[12] I have previously declared May 11, 1989 (the date when HLI, TADECO and the qualified FWBs executed the SDOA) as the starting point to reckon the effects of the revocation of the SDP (Separate Concurring and Dissenting Opinion, pp. 38-39). Upon closer study of the CARL and the relevant DAR issuances, I have reconsidered my position and propose that the starting point should be November 21, 1989.

[13] The *ponencia* (p. 24) said:

"the 500-hectare portion of Hacienda Luisita, of which the 200-hectare portion sold to LRC and the 300-hectare portion subsequently acquired by LIPCO and RCBC were part of, was already subject of the August 14, 1996 DAR Conversion Order. **By virtue of the said conversion order, the land was already reclassified as industrial/commercial land not subject to compulsory coverage**." (emphasis ours)

[14] Conversion from agricultural to industrial land took place on August 14, 1996 through DAR Conversion Order No. 03060174-764-(95).

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Considering that the 500-hectare converted land, as well as the 80.51-hectare SCTEX lot, should have been included in the compulsory coverage were it not for their conversion *and valid transfers*, then it is only but proper that the price received for the sale of these lots should be given to the qualified FWBs. In effect, the proceeds from the sale shall take the place of the lots.

x x x x x x x x x

x x x. **We maintain that the date of "taking" is November 21, 1989**, the date when PARC approved HLI's SDP per PARC Resolution No. 89-12-2, in view of the fact that **this is the time that the FWBs were considered to own and possess the agricultural lands in Hacienda Luisita**. To be precise, these lands became subject of the agrarian reform coverage through the stock distribution scheme only upon the approval of the SDP, that is, November 21, 1989. Thus, such approval is akin to a notice of coverage ordinarily issued under compulsory acquisition.[15] (emphases, italics, and underscoring ours)

To reconcile these inconsistent positions, I venture to guess that what the *ponencia* perhaps meant was that, on account of the revocation, the entire 4,915.75 hectares were deemed placed under compulsory coverage on November 21, 1989; however, despite the inclusion, portions of the land (specifically, the 500 hectares of converted land and the 80 hectares of the SCTEX land) can no longer be *distributed* among the qualified FWBs under Section 22 of the CARL[16] because of the valid transfers made in favor of third parties. Thus, it was not the conversion of the 500-hectare land that exclude it from *compulsory coverage* as it was already deemed included in the *compulsory coverage* since 1989; it was the recognition of the valid transfers of these lands to third parties that excluded them from the *actual land distribution* among the qualified FWBs.

The *ponencia* itself recognizes this legal reality by citing the "valid transfers" of the land as basis for exclusion. Yet, this is

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[15] *Supra* note 10, at 27, 29.

[16] Sec. 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[.]

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precisely what is lacking in LRC's case. By failing to intervene in this case, LRC was unable to present evidence supporting its good faith purchase of the 200-hectare converted land. The *ponencia's* conclusion that there was a valid transfer to LRC of the 200 hectares of converted land, therefore, lacks both factual and basis.

Thus, I propose, *as I did in my separate opinion to the July 5, 2011 Decision*, that LRC be given "full opportunity to present its case before the DAR x x x the failure of [LRC] 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.* x x x [A] definitive ruling on the transfer of the 200 hectares to [LRC] is premature to make." The FWBs' right to the 200-hectare converted land itself or only to the proceeds of the sale (amounting to ₱500 million[17]) can be determined only after LRC has presented its case before the DAR.

On the other hand, LIPCO/RCBC's acquisition in good faith has been adequately proven. Thus, although the 300-hectare converted land should belong to the FWBs on account of the revocation of the SDP, the valid transfer to LIPCO/RCBC entitles them only to the proceeds of the sale. The *ponencia*, however, decrees that the entire ₱750 million paid for the 200-hectare converted land should be paid to the FWBs.

I disagree with this position, as it fails to take into account that it was HLI which invested in and caused the conversion of the land from agricultural to commercial/industrial:

> Since the sale and transfer of these acquired lands came after the 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 [through its subsidiary, Centennary] 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

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[17] *Supra* note 10, at 47.

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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 [November 21, 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/RCBC.[18]

In case the LRC is able to prove its good faith purchase of the 200-hectare converted land before the DAR, the treatment of the proceeds of the sale of this land shall be the same as those of LIPCO/RCBC's 300-hectare converted land — the FWBs will be entitled only to the land's value as of November 21, 1989, and the balance shall be for the HLI as compensation for any improvements introduced.

With respect to the proceeds of the sale of the 80-hectare land to the government for the SCTEX, "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."[19]

Amounts to be Deducted from the Proceeds of the Sale of the Lands

HLI claimed that it had already paid out 3% of the proceeds of the sale of the lands to the FWBs. This amount should thus be deducted from the total proceeds that should be returned to the qualified FWBs. The taxes and expenses related to the transfer of titles should likewise be deducted, since the same amounts will be incurred regardless of the seller (HLI or the FWBs). The *ponencia* proposes that the 3% production share

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[18] Separate Concurring and Dissenting Opinion, pp. 40-41.

[19] *Id.* at 41.

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and the expenditures incurred by HLI and Centennary for legitimate corporate purposes should also be deducted from the total proceeds of the sale.

In proposing that the 3% production share be deducted from the total proceeds of sale to be returned to the FWBs, the *ponencia* has effectively reversed its own insistent declaration that all the benefits received by the FWBs shall "be respected with no obligation to refund or return them."[20] Its reliance on the "operative fact doctrine" to authorize the FWBs' retention of all the benefits would thus be for naught; what the *ponencia* has given with its right hand, it takes away with its left hand.

Also, I do not find any legitimate basis for allowing HLI to deduct from the proceeds of the sale to be turned over to the FWBs the amounts it used for legitimate corporate purposes. It is irrelevant for the *ponencia* to order the DAR "to determine if the proceeds of the sale of the 500-hectare land and the 80-hectare SCTEX lot were actually used for legitimate corporate purposes."[21] The FWBs are entitled to the proceeds of the sale of the 300-hectare land in lieu of the actual land which they are deemed to have acquired under the CARL since 1989. The *ponencia* never explained why the FWBs should bear such portion of the proceeds of the sale that HLI used to finance its operations.

Transferability of Awarded Lands

The *ponencia* denies the applicability of Section 27 of the CARL, which states:

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

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[20] *Supra* note 10, at 11.

[21] *Id.* at 28.

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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.

The *ponencia* opposes the application of the above provision by denying the FWBs the right to sell the land to third parties, including HLI. Citing DAR Administrative Order No. 1, series of 1989 (*DAR AO 1-89*), it states that "the awarded lands may only be transferred or conveyed [to third persons] after ten (10) years from the issuance and registration of the emancipation patent (*EP*) or certificate of land ownership award (*CLOA*). Considering that the EPs or CLOAs have not yet been issued to the qualified FWBs x x x, the 10-year prohibitive period has not even started."[22]

I agree with the *ponencia's* declaration, but only to the extent of prohibiting the qualified FWBs from selling the land directly to HLI (or other non-qualified purchasers). **Properly construed, the law means that, as a general rule, the FWBs are prohibited from transferring or conveying the lands within 10 years from the issuance of the EPs or CLOAs, except if the transfer or conveyance is made in favor of (a) a hereditary successor,**

[22] *Id.* at 32.

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(b) the government, (c) the Land Bank of the Philippines (*LBP*), or (d) other qualified beneficiaries; transfers or conveyances made in favor of any of those enumerated, even within the 10 years period, are not prohibited by law. A contrary interpretation would prevent the beneficiary's heir from inheriting the land in the event that the beneficiary dies within the 10-year period, and put the land's ownership in limbo. Thus, under Section 27 of the CARL, the FWBs who are no longer interested in owning their proportionate share of the land may opt to sell it to the government or the LBP, which in turn can sell it to HLI or the LRC (if it is unable to prove its good faith purchase of the 200-hectare converted land), in order not to disrupt their existing operations.

Distribution of land to FWBs and payment of just compensation to HLI

As a consequence of the revocation of the SDP, the 4,915.75 hectares of agricultural land subject of the SDP are deemed placed under the CARL's compulsory coverage since November 21, 1989. Corollary, the taking is deemed to have occurred at this time and HLI is entitled to just compensation based on the value of the entire 4,915.75-hectare land in 1989.[23] In light of this conclusion, the question that begs for a definitive response is: **is HLI entitled to interest from 1989 up to the present on the amount of just compensation it should receive**?

In several cases, the Court awarded interests when there is delay in the payment of just compensation. The underlying rationale for the award is to compensate the landowner not simply for the delay, but for the income the landowner would have received from the land had there been no immediate taking thereof by the government.[24]

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[23] The value of the 300-hectare land conveyed to LIPCO/RCBC and the 80-hectare land for SCTEX should not be excluded if the Court is to rule that the FWBs are entitled to the proceeds of these conveyances.

[24] See *Apo Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, 632 SCRA 727. See also *Land Bank of the Philippines (LBP) v. Soriano*, G.R. Nos. 180772 and 180776, May 6, 2010, 620 SCRA 347, where the Court declared that

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This principle, however, does not apply to the present case because HLI never lost possession and control of the land; all the incomes that the land generated were appropriated by HLI. No loss of income from the land (that should be compensated by the imposition of interest on the just compensation due) therefore resulted. On the contrary, it is the qualified FWBs who have been denied of income due to HLI's possession and control of the land since 1989. Thus, HLI should pay the qualified FWBs rental for the use and possession of the land up to the time it surrenders possession and control over these lands. The DAR, as the agency tasked to implement agrarian reform laws, shall have the authority to determine the appropriate rental due from HLI to the qualified FWBs. In recognition, however, of any improvements that HLI may have introduced on these lands, HLI is entitled to offset their value from the rents due.

Application of the principle of set-off

The consequence of the revocation of the SDP, as I have repeatedly stated, is the restoration of the parties to their respective conditions prior to its execution and approval — thus, they are bound to restore whatever they received on account of the SDP. However, this does not prevent the application of the principle of set-off or compensation. The retention, either by the qualified FWBs or the HLI, of some of the benefits received pursuant to the revoked SDP is based on the application of the principle of compensation, not on the misapplication of the operative fact doctrine.

DISPOSITIVE PORTION

Accordingly, I maintain my vote to DENY HLI's petition and AFFIRM the PARC's Resolution Nos. 2005-32-01 and 2006-34-01 revoking the SDP.

The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.

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The entire 4,915.75 hectares of land are deemed PLACED UNDER COMPULSORY COVERAGE of the CARL AS OF NOVEMBER 21, 1989, and the 6,296 qualified FWBs shall be deemed to have acquired rights over the land as of this date. The DAR shall DISTRIBUTE the land among the 6,296 qualified FWBs, EXCLUDING:

a. the 300 hectares of converted land acquired by LIPCO/ RCBC; and

b. the 80 hectares of land expropriated by the government for the SCTEX.

The LRC shall be entitled to prove before the DAR that there was valid transfer of the 200 hectares of converted land. If the DAR finds that LRC is a purchaser in good faith and for value, the 200 hectares of converted land shall likewise be excluded from the land to be distributed among the qualified FWBs.

The DAR is ORDERED to determine the amount of just compensation that HLI is entitled to for the entire 4,915.75 hectares of agricultural land, based on the value at the time of taking — November 21, 1989, and no interest shall be imposed on this amount. The DAR is FURTHER ORDERED to determine the amount of RENTALS that HLI must pay to the qualified FWBs for the use and possession of the land beginning November 21, 1989, until possession is turned over to the DAR, for distribution (with due adjustment for the portions conveyed to LIPCO/RCBC, the government for the SCTEX, and, if found by the DAR to be a valid transfer, LRC). HLI, however, is entitled to DEDUCT from the rentals due the value of the improvements it made over the land (excluding those sold to LIPCO/RCBC and LRC, if the DAR finds that there was a valid transfer).

HLI shall PAY to the FWBs the value of the

a. 300 hectares of converted land conveyed to LIPCO/ RCBC, based on its November 21, 1989 value, as determined by the DAR; and

b. if the DAR finds that there was a valid transfer, 200 hectares of converted land conveyed to LRC.

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HLI shall also PAY the qualified FWBs just compensation received from the government for the 80 hectares of expropriated land for the SCTEX.

From the total amount of the proceeds of the sale and the just compensation to be paid by HLI to the qualified FWBs, the DAR shall DEDUCT the ₱150 million, representing the 3% production share and the aggregate value of the homelots that the qualified FWBs received from HLI. The amount of the 3% production share shall depend on the amount actually received by the FWBs from HLI, to be determined by the DAR.

All the FWBs shall return to HLI the 59 million shares of stock. They are, however, entitled to retain all the salaries, wages and other benefits received as employees of HLI.

CONCURRING AND DISSENTING OPINION

BERSAMIN, *J.*:

I concur with the Resolution the Court issues today by way of resolving the various motions filed against the decision dated July 21, 2011.

I respectfully dissent on two aspects, however, and I humbly opine that: *one*, the reckoning date for purposes of determining just compensation *should be* left to the DAR and Land Bank, and, ultimately, to the Special Agrarian Court (SAC) to determine; and *two*, the landowner should be compensated for the value of the homelots granted to the farmworkers-beneficiaries (FWBs) pursuant to the discredited stock distribution plan (SDP).

Let me explain my position.

I

In the decision of July 5, 2011, the Court upheld the PARC's assailed resolutions placing the agricultural lands subject of the SDP under compulsory coverage of the Comprehensive Agrarian Reform Program (CARP), and declared HLI entitled to just compensation to be reckoned from November 21, 1989.

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Today's Resolution continues to follow the same reckoning date of November 21, 1989 due to its being the date when PARC approved HLI's SDP and thereby placed the affected agricultural lands under the coverage of CARP. The Resolution explains that it was upon the approval of the SDP that the farmworker-beneficiaries (FWBs) had come to be considered to own and possess the affected agricultural lands.

The determination of when the taking occurred is an integral and vital part of the determination and computation of just compensation. The nature and character of land *at the time of its taking* are the principal criteria to determine just compensation to the landowner.[1] In *National Power Corporation v. Court of Appeals*,[2] the Court emphasized the importance of the time of taking in fixing the amount of just compensation, thus:

> xxx [T]he Court xxx invariably held that **the time of taking is the critical date in determining lawful or just compensation**. Justifying this stance, Mr. Justice (later Chief Justice) Enrique Fernando, speaking for the Court in *Municipality of La Carlota vs. The Spouses Felicidad Baltazar and Vicente Gan*, said, "xxx the owner as is the constitutional intent, is paid what he is entitled to according to the value of the property so devoted to public use as of the date of the taking. From that time, he had been deprived thereof. He had no choice but to submit. He is not, however, to be despoiled of such a right. No less than the fundamental law guarantees just compensation. It would be an injustice to him certainly if from such a period, he could not recover the value of what was lost. There could be on the other hand, injustice to the expropriator if by a delay in the collection, the increment in price would accrue to the owner. The doctrine to which this Court has been committed is intended precisely to avoid either contingency fraught with unfairness."[3] (emphasis supplied)

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[1] *Republic v. Cancio*,G.R. No. 170147, January 30, 2009, 577 SCRA 346; *National Power Corporation v. Henson*, G.R. No. 129998, December 29, 1998, 300 SCRA 751, 756.

[2] G.R. No. 113194, March 11, 1996, 254 SCRA 577.

[3] *Id*. at 589.

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It is my humble submission, therefore, that the factual issue of when the taking had taken place as to the affected agricultural lands should not be separated from the determination of just compensation by DAR, Land Bank and SAC. Accordingly, I urge that the Court should leave the matter of the reckoning date to be hereafter determined by the DAR and Land Bank pursuant to Section 18 of Republic Act No. 6657.[4] Should the parties disagree thereon, the proper SAC will then resolve their disagreement as an integral part of a petition for determination of just compensation made pursuant to Section 57 of Republic Act No. 6657, to wit:

> Section 57. *Special Jurisdiction*. — The Special Agrarian Courts shall have original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners, and the prosecution of all criminal offenses under this Act.
>
> The Rules of Court shall apply to all proceedings before the Special Agrarian Courts, unless modified by this Act.
>
> The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

II

It appears to me that the homelots granted to the FWBs under the SDP do not form part of the total area of the agricultural lands to be turned over to DAR for distribution to the qualified FWBs for which the landowner will be justly compensated. If my impression is correct, I fear that the result will be unfair should the landowner not be justly compensated for the value of the homelots. In such a situation, the taking will be confiscatory and unconstitutional.

I submit, therefore, that HLI as the landowner should be justly compensated also for the homelots.

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[4] Section 18. *Valuation and Mode of Compensation*. — The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and LBP or as may be finally determined by the court as just compensation for the land.

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CONCURRING AND DISSENTING OPINION

SERENO, *J.*:

At the outset, I have maintained that the nullity of the Stock Distribution Option Agreement (SDOA) in Hacienda Luisita should lead to the immediate distribution of the agricultural lands to the 6,296 qualified farmer-beneficiaries (FWBs). The first draft of the *ponencia* of the original Decision was circulated among the Members of the Court on 11 February 2011. The draft *ponencia*, which eventually became the majority Decision, said that the nullity of the SDOA notwithstanding, effects of its approval have taken place and cannot be undone under the operative facts doctrine and thus directed the holding of a secret voting among the FWBs on whether they will opt to remain as stockholders of petitioner Hacienda Luisita, Inc. (HLI). Shortly thereafter, on 25 March 2011, the first draft of my opinion objecting to the grant of the secret voting option to the FWBs to stay with the SDOA was circulated. Other draft dissenting opinions against the proposed *ponencia* were subsequently released. After the promulgation of the Decision dated 05 July 2011 and after carefully reviewing the instant motions for reconsideration, my initial position remains the same — the SDOA is illegal and land distribution should immediately be directed under Section 33 of Republic Act No. 6657, or the Comprehensive Agrarian Reform Law (CARL).

I welcome the change in the position of the majority, and voting with them, this Court is now unanimously directing immediate land distribution. However, I disagree with its identification of the reckoning date of the "taking" of the lands ordered to be distributed for the purpose of eventually determining "just compensation." On the instant motions for reconsideration, the *ponencia* talks of the possibility of rendering it impossible for the FWBs to pay for the lands if the reckoning date were the date of Notice of Coverage, or on 02 January 2006. It holds that regardless of the uniform rulings of the Court I enumerated in this Opinion to the effect that the "taking" is the date of the Notice of Coverage, it is creating a new rule — that

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for SDOAs that are nullified, the compensation for the value of the lands that will be distributed are to be reckoned at their fair market value at the time of the approval of the nullified SDOA.

In my view, such an approach is partially confiscatory as it makes an unjustified exception to the long line of jurisprudence that the Court has laid down regarding the time of "taking" of agrarian reform lands for purposes of just compensation. It would have been preferable, from a policy point of view, that at the time that the CARL was passed in 1989, Congress had chosen one of two options: (a) either the State subsidize the difference between the fair market value at the time of the taking and what the farmers can afford to pay, which some of the 1986 Constitutional Commissioners said should happen; or (b) authorize the confiscation of a part of the price of the fair market value under a radical but rational interpretation of the social justice clause of the 1987 Constitution. Congress chose neither option and opted for payment of the fair market value at the time of the taking as just compensation to be amortized by the farmers for 30 years. This Court has invariably sustained that policy choice. This in large part accounts for the confessed lack of financial viability to make land reform a genuine success.

The choice having been thusly made, this Court has no alternative except to apply the rule uniformly, otherwise, this will result in a discriminatory and partially confiscatory treatment of the Hacienda Luisita lands. That is also why I was proposing that the lands to be distributed to the qualified FWBs be declared to be immediately and freely transferable. After all, the 10-year prohibition against the transfer effectively lapsed on the tenth year of the effectivity of the CARL. The FWBs can sell part and retain part of the lands, and can best determine how to make optimal economic use of them.

My view resonates with the opinion of Justice Arturo D. Brion, who reckoned the value of the lands to the time the SDOA was approved on 21 November 1989, but at the same time recognized petitioner HLI's entitlement to the value of the improvements to the land. He laments the fact that petitioner HLI will be uncompensated for all the improvements it has

introduced as a builder in good faith from 21 November 1989 until now. I agree with him on this point.

The Five Approaches to Resolving this Petition

There are before the Court five major approaches to resolving the agrarian legal problems involving Hacienda Luisita. Each approach advances operative solutions to two standing issues: (a) whether to distribute the agricultural lands to the FWBs or allow them to secretly vote to remain as stockholders; and (b) how much compensation, if any, is due to the corporate landowner.

The **first approach**, which has now been abandoned, is that ordered by the Court's questioned Decision dated 05 July 2011, and as suggested by Chief Justice Renato C. Corona in his Dissenting Opinion of the same date. A secret voting will take place in which FWBs want to indicate whether they will retain their stockholding in petitioner HLI in lieu of their individual right to a direct share in the land, or whether they want direct land ownership. In cases where direct land ownership is selected, petitioner HLI shall be paid the value of the lands as of 21 November 1989, which was the date when the PARC approved its SDOA with the FWBs.

The **second approach** is that proposed by Justice Arturo D. Brion in his earlier Separate Concurring and Dissenting Opinion, which Justice Martin S. Villarama, Jr., joined in. The approach is to order direct land distribution to all the FWBs of the 4,916 hectares of land. The date of the taking will be pegged to 11 May 1989 (the date of the SDOA), and the just compensation will also be pegged to that time. There will be no interest on the just compensation and petitioner HLI will be required to pay back rentals as of that date.

The **third approach** is like the first approach, but modified by the legal consequences of the statement made by the majority in the body of the Decision that a stock option arrangement can only be valid if majority control of the corporation is in the hands of the FWBs. Thus, the Court must categorically direct (a) a revaluation of the assets of HLI; (b) this revaluation must

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result in at least 51% control of the voting stock and the beneficial interest; and (c) this restructuring must be completed before the referendum for the FWBs is undertaken by public respondent Department of Agrarian Reform (DAR).

The **fourth approach** is a suggested modification of the second approach. The "taking" and the value of the just compensation is pegged to 11 May 1989, but the Tarlac Development Corporation (TADECO) and/or petitioner HLI (a) must be compensated for (i) interest on the value of the just compensation at that time onwards; (ii) and improvements that have been introduced to the lands with interest on the value of the improvements since these improvements were utilized; (b) may be required to pay rentals for the use of the land in their state as of 11 May 1989 adjudicated by a reasonable annual rate applicable to the lands in such state; and (c) cannot be made to return the entire ₱750,000,000 paid by Luisita Industrial Park Corporation (LIPCO) to petitioner HLI for the 300 hectare lands, the ₱80,000,000 paid by the national government for the 84 hectares expropriated for the Subic-Clark-Tarlac-Expressway (SCTEX), but only the value of the 300 hectares and the 84 hectares as of 11 May 1989, plus interest on the same at the same rate that will be given in favor of petitioner HLI under item (a) above.

The **fifth approach** requires direct land distribution. The "taking" and the value of the just compensation is pegged according to law and prevailing jurisprudence. The just compensation is pegged to the date of actual taking, and its value is approximately at fair market value.

The first approach is contrary to law and unjust to the farmers. The second approach is contrary to prevailing jurisprudence on just compensation and is confiscatory of the right of the landowners. It would have been legally supportable under the initial interpretation of "just compensation" in agrarian reform cases when "socialized taking" was contemplated, but since 1989, law and jurisprudence prevents this approach from being adopted. The third approach, while still legally wrong, mitigates much of the injustice that will be perpetrated by the first approach.

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The fourth approach will contradict jurisprudence on "just compensation" and require a lot of accounting exercises, but is less harsh to the farmers and the landowners. The fifth approach is logically consistent, but requires much creative designing by public respondent DAR. The last three approaches would not work too great an injustice on either the FWBs or the landowners.

Land Distribution v. Secret Voting

The Court has unanimously struck a lethal blow to the SDOA between petitioner Hacienda Luisita, Inc., (HLI) and the signatory farmworker-beneficiaries (FWBs), since its provisions were found to be in violation of the Comprehensive Agrarian Reform Law (CARL). Despite the unequivocal invalidation of the SDOA, the Court was divided on the various approaches in dealing with the aftermath of the declaration in accordance with the promises of agrarian reform under the Constitution.

To my mind, no other option is permissible under the law other than **the immediate and direct land distribution to the FWBs as provided for under the CARL**. The rejection of the secret voting option by the *ponente*, Justice Presbitero J. Velasco, Jr., in his Resolution of the various Motions for Clarification/ Reconsideration by the main concerned parties, as well as by Chief Justice Corona in his Separate Opinion, is a very positive turn of events.

As the new *ponencia* points out, the distribution of the stocks under the SDOA is evidently iniquitous because the FWBs will continue to be relegated as minority stockholders holding, at best, 33.29% of the votes in the corporation.[1] Under the first approach, the secret voting option would, in fact, further aggravate the minority position of the FWBs in petitioner HLI since those who opt for direct land distribution would have to surrender their stockholdings. Should petitioner HLI's current corporate

[1] Under the SDOA, the FWBs are entitled to the equivalent of the value of the agricultural lands compared with the total assets of petitioner HLI. In this case, the value of petitioner HLI's agricultural land is pegged at ₱196,630,000; while its claimed total assets are worth ₱590,554,220. Thus, the FWBs would be able to hold at maximum 33.296% of petitioner HLI's shares.

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structure of lands-to-total-assets ratio be maintained, FWBs who will opt to remain as stockholders will find themselves with a decreased voting power base and placed at an even greater disadvantage with the exodus of other FWBs who will opt for individual distribution of land.

The outcome of the SDOA in Hacienda Luisita may have been different had the FWBs been given **majority or even full control** of petitioner HLI at the outset, which is the rationale of the third approach. The secret voting option would have been less unjust, if majority control of the corporation is first handed to the FWBs, before they decide whether to remain as stockholders or opt for land distribution. The third approach recognizes the constitutional mandate to hand over ownership and control of agricultural lands to the farmers or farmworkers, whether directly through individual ownership or indirectly through collective ownership. Considering that stock distribution options *per se* have not been declared as unconstitutional mechanisms in agrarian reform, the Court must at present give life to the intention of the legislature in opening up that option to corporate landowners, but not at the expense of relegating the FWBs to minority status. The presence of this solution also avoids having to pronounce Section 28 of the CARL void, a preferred approach to statutory construction that this Court is bound to observe by judicial review doctrines.

Just Compensation v. Modified Compensation

Since there is now unanimity in ordering the distribution of the agricultural lands to the FWBs in this case, the Court now contends with the quantum of compensation due to petitioner HLI with respect to its expropriated farm lands. It is not surprising that the issue of just compensation that has plagued the members of the Constitutional Commission and Congress has again reared its head in the present legal controversy, involving the peculiar mechanism of a stock distribution option under the CARL. Fortunately, the wealth of jurisprudence in the years following the passage of the landmark law up to the present offers some guidance in arriving at a solution that conforms with the constitutional mandate of agrarian reform and social justice.

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While distribution of land was the prevailing ideology in crafting our agrarian reform policies in the Constitution, the other side of the spectrum is the recognition of the rights of the landowner specifically the right of just compensation.[2] The aim of redistributing agricultural lands under the Constitution was primarily to correct the unjust social structures then prevailing in order to achieve an equitable distribution of wealth from the landed few in favor of the landless majority. Yet, in recognizing the social function of the lands and the demands of social justice, the framers never lost sight of the property rights of landowners, as an inherent limitation to the exercise of the State's power of eminent domain or expropriation, even in cases of agrarian reform. Concomitant with the fundamental right not to be deprived of property without due process of law[3] is the constitutional provision that "[p]rivate property shall not be taken for public use without just compensation."[4] Hence, the policy underlying the provision for eminent domain is to make the private owner "whole" after his property is taken by the State.[5]

The taking of private lands under the agrarian reform program partakes of the nature of an expropriation proceeding.[6] For purposes of taking under the agrarian reform program, **the framers of the Constitution expressly made its intention known that**

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[2] "… 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**. …" (CONSTITUTION, Art. XIII, Sec. 4)

[3] "No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." (CONSTITUTION, Art. III, Sec. 1)

[4] CONSTITUTION, Art. III, Sec. 9.

[5] Dissenting Opinion of Chief Justice Renato C. Corona, in *Republic of the Philippines v. Gingoyon*, G.R. No. 166429, 19 December 2005, 478 SCRA 474, citing *State by Department of Highways v. McGuckin*, 242 Mont 81, 788 P2d 926.

[6] *Gabatin v. Land Bank of the Philippines*, G.R. No. 148223, 25 November 2004, 444 SCRA 176.

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the owners of the land should not receive less than the market value for their expropriated properties and drew parallelisms with the ordinary understanding of just compensation in non-land reform expropriation.[7] Indeed, the matter of just compensation was never meant to involve a severe diminution of what the land owner gets.[8] The aim of just compensation in terms of expropriation, even in agrarian reform, should be just to the owner — that which approximates the market value.[9] Hence, the Court acknowledged the other side of the agrarian reform coin and ruled:

> The Comprehensive Agrarian Reform Program was undertaken primarily for the benefit of our landless farmers. **However, the undertaking should not result in the oppression of landowners by pegging the cheapest value for their lands. Indeed, the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation, but not at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws**. …[10] (Emphasis supplied)

In the seminal case *Association of Small Landowners in the Philippines v. Secretary of Agrarian Reform*,[11] the Court,

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[7] "FR. BERNAS: But is it the intention of the Committee that the owner should receive less than the market value?

"MR. MONSOD: It is not the intention of the Committee that the owner should receive less than the just compensation." (Minutes of the Deliberations of the Constitutional Commission, [17 August 1986], p. 17)

[8] Minutes of the Deliberations of the Constitutional Commission, Fr. Joaquin Bernas, S. J. (04 August 1986), p. 648.

[9] "FR. BERNAS. The sense is, it must be just to the owner.

MR. TREÑAS. Precisely.

FR. BERNAS. The owner should get the full market value. But then we have to make a provision as to where the payment will come from." (Minutes of the Deliberations of the Constitutional Commission, [17 August 1986], p. 18)

[10] *LBP v. Chico*, G. R. No. 168453, 13 March 2009, 581 SCRA 226.

[11] G.R. Nos. 78742, 79310, 79744, and 79777, 14 July 1989, 175 SCRA 343.

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speaking through retired Justice Isagani Cruz, eloquently expounded on the inherent right of landowners to just compensation, in this wise:

> Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. **It has been repeatedly stressed by this Court that the measure is not the taker's gain but the owner's loss**. The word "just" is used to intensify the meaning of the word "compensation" to convey the idea that the equivalent to be rendered for the property to be taken shall be **real, substantial, full, ample**.
>
> It bears repeating that the measures challenged in these petitions contemplate more than a mere regulation of the use of private lands under the police power. We deal here with an actual taking of private agricultural lands that has dispossessed the owners of their property and deprived them of all its beneficial use and enjoyment, **to entitle them to the just compensation mandated by the Constitution.**
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> As held in *Republic of the Philippines v. Castellvi*, there is compensable taking when the following conditions concur: (1) the expropriator must enter a private property; (2) the entry must be for more than a momentary period; (3) the entry must be under warrant or color of legal authority; (4) the property must be devoted to public use or otherwise informally appropriated or injuriously affected; and (5) **the utilization of the property for public use must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property**. All these requisites are envisioned in the measures before us.

Since the farm lands in Hacienda Luisita are to be the subject of distribution, petitioner HLI or Tarlac Development Corporation (TADECO), as landowners, are entitled to just compensation, which is an indispensible legal requirement in agrarian reform expropriations.[12] The issue now lies in the reckoning period in which the just compensation shall be computed, as illustrated by the second, fourth and fifth approaches. Crucial to the Court's resolution of this matter is the **time of the taking** by the government of the farm lands in Hacienda Luisita.

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[12] "Agrarian reform is a revolutionary kind of expropriation. The recognized rule in expropriation is that title to the expropriated property shall pass from

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Just compensation in cases of expropriation is ordinarily to be ascertained as of the time of the taking.[13] In computing the just compensation for expropriation proceedings, it is the value of the land at the time of the taking, not at the time of the rendition of judgment, which should be taken into consideration.[14] Hence, in determining the value of the land for the payment of just compensation, the time of taking should be the basis.[15] The concept of taking in both land reform and non-land reform expropriations is well-settled. There is taking of private property by the State in expropriation proceedings when the owner is ousted from his property and deprived of his beneficial enjoyment thereof.[16] The "time of taking" is the moment when landowners are deprived of the use and benefit of the property.[17]

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the owner to the expropriator only upon full payment of the just compensation. **Thus, payment of just compensation to the landowner is indispensable**." (*Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108)

[13] *B. H. Berkenkotter & Co. v. Court of Appeals*, G.R. No. 89980, 14 December 1992, 216 SCRA 584, citing *Land Bank of the Philippines v. Court of Appeals*, 258 SCRA 404 (1996) and *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343 (1989).

[14] *B. H. Berkenkotter & Co. v. Court of Appeals, id.*, citing *Republic of the Philippines v. Ker and Company Limited*, 383 SCRA 584 (2002) and *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, 175 SCRA 343 (1989).

[15] *B. H. Berkenkotter & Co. v. Court of Appeals, id.*

[16] "'Taking' under the power of eminent domain may be defined generally as entering upon private property for more than a momentary period, and, under the warrant or color of legal authority, devoting it to a public use, or otherwise informally appropriating or injuriously affecting it in such a way as substantially **to oust the owner and deprive him of all beneficial enjoyment thereof**." (*Republic of the Philippines v. vda. de Castellvi*, G.R. No. L-20620, 15 August 1974, 157 Phil. 329, citing 26 Am. Jur. 2nd ed., Sec. 157)

[17] "It is reminded to adhere strictly to the doctrine that just compensation must be valued at the time of taking. The 'time of taking' is the time when the landowner was deprived of the use and benefit of his property, such as

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Three reckoning periods are for consideration of the Court. *First*, Justice Velasco, who is now joined by Justice Brion, proposes that the amount of just compensation to be paid should be based on the date that the PARC approved the SDOA, or on 21 November 1989 (**date of the PARC approval**). *Second*, the date the SDOA was signed, 18 May 1989, (**date of the SDOA**) was also considered as a reckoning point of the valuation period. *Lastly*, I submit that the valuation be made based on the current fair market value in accordance with established laws, rules and jurisprudence; or more specifically, at the time that petitioner HLI was issued a Notice of Coverage on 02 January 2006 (**date of Notice of Coverage**). With all due respect to my colleagues, the third reckoning period alone satisfies the constitutional directive to give real, substantial, full and ample compensation to the landowner in recognition of the latter's right to property and of the express limitation on the State's power of expropriation.

The period of valuation of the property cannot be reckoned by considering the first two dates as the time that the agricultural lands were taken, precisely because petitioner HLI and the FWBs resorted to the mechanism of a stock distribution option. This was a distinctive mechanism under the agrarian reform scheme, by which shares of stock of the corporate landowner, instead of agricultural lands, were distributed to the farmers. The singular advantage of the said scheme, unlike a direct land transfer to individual farmers or cooperatives, is that title to the property remains with the corporate landowner, which should presumably be dominated by famers with majority stockholdings in the corporation.

The reason behind the 1989 reckoning periods (the date of SDOA or the date of PARC approval) is that the agricultural lands are made the subject of the CARL, and are thus considered to have been expropriated private property under the agrarian reform program. However, the use of these periods ignores the

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when title is transferred to the Republic." (*Land Bank of the Philippines v. Livioco*, G.R. No. 170685, 22 September 2010, citing *Eusebio v. Luis*, 603 SCRA 576, 586-587 [2009])

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fact that petitioner HLI, as the corporate landowner, exactly availed itself of the stock distribution option under the CARL, which resulted in the title remaining in the hands of private persons. Instead of expropriating lands, what the government took and distributed to the FWBs were shares of stock of petitioner HLI in proportion to the value of the agricultural lands that should have been expropriated and turned over to the FWBs.

Hence, no taking of agricultural lands can be considered either at the time the SDOA was signed or at the time PARC approved it, since petitioner HLI retained full ownership and use of the lands thereafter. Despite the change in stockholders, petitioner was never ousted from or deprived of the beneficial enjoyment of the agricultural lands in Hacienda Luisita. This was the very reason why the stock distribution option was the mode specifically preferred by the corporate landowner in this case. Indeed, petitioner freely exercised ownership of the property in the interim, when it applied for the conversion of the lands and sold them to third parties. Even Justice Brion acknowledged this fact in his earlier Separate Opinion, in which he said: "HLI never lost possession and control of the land under the terms of the SDOA." It appears iniquitous to reckon the valuation of the now expropriated farm lands in Hacienda Luisita by their 1989 levels, when the property had not yet been actually taken or expropriated by the government at that time.

The CARL, as amended, had expressly identified the factors in arriving at just compensation for landowners whose properties have been subject to land reform expropriation:

> In determining just compensation, **the cost of acquisition of the land, the value of the standing crop, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, the assessment made by government assessors, and seventy percent (70%) of the zonal valuation of the Bureau of Internal Revenue (BIR)**, translated into a basic formula by the DAR shall be considered, subject to the final decision of the proper court. The **social and economic benefits** contributed by the farmers and the farmworkers and by the Government to the property as well as the **nonpayment of taxes or loans secured from any government financing institution on**

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the said land shall be considered as additional factors to determine its valuation.[18]

Pursuant to its rule-making powers, the Department of Agrarian Reform (DAR) reduced these factors into a basic general formula that computes the value of the land subject of agrarian reform in this manner:[19]

Land Value = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where

CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

In a long line of cases, the Court has given judicial imprimatur to the above formulation made by the DAR. The following cases demonstrate judicial fealty to this formula: *LBP v. Spouses Banal*, G.R. No. 143276, 20 July 2004, 434 SCRA 543; *LBP v. Celada*, G.R. No. 164876, 23 January 2006, 479 SCRA 495; *Lubrica v. LBP*, G.R. No. 170220, 20 November 2006, 507 SCRA 415; *LBP v. Lim*, G.R. No. 171941, 02 August 2007, 529 SCRA 129; *LBP v. Suntay*, G.R. No. 157903, 11 October 2007, 535 SCRA 605; *Spouses Lee v. LBP*, G.R. No. 170422, 07 March 2008, 548 SCRA 52; *LBP v. Heirs of Eleuterio Cruz*, G.R. No. 175175, 29 September 2008, 567 SCRA 31; *LBP v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108; *LBP v. Gallego*, Jr., G.R. No. 173226, 20 January 2009, 576 SCRA 680; *LBP v. Kumassie Plantation*, G.R. Nos. 177404 and 178097, 25 June 2009, 591 SCRA 1; *LBP v. Rufino*, G.R. Nos. 175644 and 175702, 02 October 2009, 602 SCRA 399; *LBP v. Luciano*, G.R. No. 165428, 25 November 2009, 605 SCRA 426; *LBP v. Dizon*, G.R. No. 160394,

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[18] Republic Act No. 6657, Sec. 17, as amended by Republic Act No. 9700.

[19] DAR Administrative Order No. 06-92 dated 30 October 1992, as amended by DAR Administrative Order No. 11-94 dated 13 September 1994; *see also* DAR Administrative Order No. 05-98 dated 15 April 1998 and DAR Administrative Order No. 02-09 dated 15 October 2009.

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27 November 2009, 606 SCRA 66; *Heirs of Lorenzo and Carmen Vidad v. LBP*, G.R. No. 166461, 30 April 2010, 619 SCRA 609; *LBP v.* Soriano, G.R. Nos. 180772 and 180776, 06 May 2010, 620 SCRA 347; *LBP v. Barrido,* G.R. No. 183688, 18 August 2010, 628 SCRA 454; *LBP v. Colarina*, G.R. No. 176410, 01 September 2010, 629 SCRA 614; *LBP v. Livioco,* G. R. No. 170685, 22 September 2010, 631 SCRA 86; *LBP v. Escandor,* G.R. No. 171685, 11 October 2010, 632 SCRA 504; *LBP v. Rivera,* G.R. No. 182431, 17 November 2010, 635 SCRA 285; *LBP v. DAR*, G.R. No. 171840, 04 April 2011. **In all these cases, the formula approximately reflects the fair market value of the property at the time of the Notice of Coverage** to estimate the loss suffered by the landowner, whose property was the subject of expropriation.

Thus, under the uniform rulings of this Court, the notice of coverage commences the process of acquiring private agricultural lands covered by the CARP.[20] The date of the notice of coverage is therefore determinative of the just compensation petitioner HLI is entitled to for its expropriated lands. In computing capitalized net income under the DAR formula, one should use the average gross production of the latest available 12 months immediately preceding **the date of notice of coverage**, in case of compulsory acquisition, and the average selling price of the latest available 12 months prior to the date of receipt of the claim folder by the Land Bank of the Philippines for processing.[21]

The rationale for pegging the period of computing the value so close or near the present market value at the time of the taking is to consider the appreciation of the property brought about by improvements therein and other factors. The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should

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[20] DLR Administrative Order No. 04-05 dated 02 August 2005.

[21] *LBP v. Rufino*, G.R. Nos. 175644 and 175702, 02 October 2009, 602 SCRA 399.

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be given to the landowner.[22] All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered.[23] For the compensation to be just to the owner of a commercial farm land, the facilities and improvements introduced by the landowner — not just the land — shall also be taken into consideration.[24] It is but equitable to extend to the landowner compensation arising from the appreciation of the property due to the improvements introduced therein. To simply disregard the changes, appreciation or improvements in the agricultural lands of Hacienda Luisita by pegging the property to its 1989 value is to resort to expropriation that is **confiscatory** — considering that it will be the sole exception to a long line of jurisprudence — and not compensatory which is prescribed under the Constitution as a fundamental right of a landowner.

Indeed, the previous decisions of this Court dealt with voluntary or compulsory coverage under the CARL. It would appear that this is the first instance that the Court is confronted with the question of determining just compensation for cases where the landowners and farmworker-beneficiaries resorted to a stock distribution option that had failed and was nullified. Unlike voluntary or compulsory coverage where the payment of just compensation was roughly speaking executed together with the taking, the stock distribution option in the present scenario has "time" complication. Although the lands were subjected the stock distribution mechanism in 1989, the PARC's decision to nullify the SDOA and its Notice of Coverage ordering immediate

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[22] *National Power Corporation v. Tiangco*, G.R. No. 170846, 06 February 2007, 514 SCRA 674, citing *National Power Corporation v. Chiong*, 404 SCRA 527 (2003).

[23] *National Power Corporation v. Tiangco*, *id.*, citing *Export Processing Zone Authority v. Dulay*, 149 SCRA 305 (1987).

[24] "Determination of just compensation for commercial farms shall include not only the land but also the facilities and improvements introduced by the landowner. It may take into account the type of commercial crops planted (*e.g.* banana, pineapple, rubber) and such other relevant factors consistent with agrarian laws, rules and regulations"; (DAR Administrative Order No. 09-98 dated 23 December 1998, Art. 1, Sec. 2 [f])

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land distribution came about only in 2006. The Court is confronted with the judicial task of determining standards to reconcile the various legal contentions on this time difference, considering other existing stock distribution schemes across the country that are also subject of similar legal challenges.

I believe there is no reason why those same principles and standards in determining just compensation in voluntary or compulsory acquisition should not be equally applicable to a stock distribution scheme. The Constitution, the CARL and even our own jurisprudence have been consistent in approximating a fair valuation of the properties expropriated by the State under its agrarian reform program, and must continue to do so in the case of a failed stock distribution scheme.

With the equal protection clause in mind, it is simply wrong for landowners to have their real properties, subject of expropriation, valued several years or even decades behind, considering the upward trend in property values. The Court explained this inherent unfairness when it was confronted by a non-land reform expropriation case, in which the trial court and the appellate court fixed the valuation of the property at its 1984 and 1993 values, respectively, in this wise:

> In eminent domain cases, the time of taking is the filing of the complaint, if there was no actual taking prior thereto. Hence, in this case, **the value of the property at the time of the filing of the complaint on November 20, 1990** should be considered in determining the just compensation due the respondents. So it is that in *National Power Corporation v. Court of Appeals, et al.*, we ruled:
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> > **Normally, the time of the taking coincides with the filing of the complaint for expropriation**. Hence, many rulings of this Court have equated just compensation with the value of the property as of the time of filing of the complaint consistent with the above provision of the Rules. So too, where the institution of the action precedes entry into the property, the just compensation is to be ascertained as of the time of the filing of the complaint.
>
> **The trial court fixed the value of the property at its 1984 value, while the CA, at its 1993 worth**. Neither of the two

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determinations is correct. For purposes of just compensation, the respondents should be paid the value of the property as of the time of the filing of the complaint which is deemed to be the time of taking the property.

It was certainly unfair for the trial court to have considered a property value several years behind its worth at the time the complaint in this case was filed on November 20, 1990. **The landowners are necessarily shortchanged**, considering that, as a rule, land values enjoy steady upward movement. It was likewise erroneous for the appellate court to have fixed the value of the property on the basis of a 1993 assessment. NPC would be paying too much. Petitioner corporation is correct in arguing that the respondents should not profit from an assessment made years after the taking.

The expropriation proceedings in this case having been initiated by NPC on November 20, 1990, property values on such month and year should lay the basis for the proper determination of just compensation. In *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, the Court ruled that the equivalent to be rendered for the property to be taken shall be substantial, full, ample and, as must apply to this case, real. This must be taken to mean, among others, that the value as of the time of taking should be the price to be paid the property owner.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. In this case, this simply means the property's fair market value at the time of the filing of the complaint, or "that sum of money which a person desirous but not compelled to buy, and an owner willing but not compelled to sell, would agree on as a price to be given and received therefor." **The measure is not the taker's gain, but the owner's loss.**

In the determination of such value, the court is not limited to the assessed value of the property or to the schedule of market values determined by the provincial or city appraisal committee; these values consist but one factor in the judicial valuation of the property. **The nature and character of the land at the time of its taking is the principal criterion for determining how much just compensation should be given to the landowner All the facts as to the condition of the property and its surroundings, as well as its improvements and capabilities, should be considered.**

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Neither of the two determinations made by the courts below is therefore correct. A new one must be arrived at, taking into consideration the foregoing pronouncements.[25] (Emphasis supplied)

In *Apo Fruits Corporation, et al., v. Land Bank of the Philippines*,[26] the Court *en banc* awarded 12% interest to petitioners Apo Fruits Corporation and Hijo Plantation, Inc., for prime agricultural farmlands voluntarily offered to the farmers way back in 1995. We underscored then the value-for-value exchange dictated by just compensation in land reform expropriations, so that the landowner would not be short-changed:

Under the circumstances of the present case, we see no compelling reason to depart from the rule that Republic firmly established. **Let it be remembered that shorn of its eminent domain and social justice aspects, what the agrarian land reform program involves is the purchase by the government, through the LBP, of agricultural lands for sale and distribution to farmers**. As a purchase, it involves an exchange of values — the landholdings in exchange for the LBP's payment. In determining the just compensation for this exchange, however, the measure to be borne in mind is not the taker's gain but the owner's loss since what is involved is the takeover of private property under the State's coercive power. **As mentioned above, in the value-for-value exchange in an eminent domain situation, the State must ensure that the individual whose property is taken is not shortchanged and must hence carry the burden of showing that the "just compensation" requirement of the Bill of Rights is satisfied.**

The owner's loss, of course, is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. The just compensation is made available to the property owner so that he may derive income from this compensation, in the same manner that he would have derived income from his expropriated property. If full compensation is not paid for property taken, then the State must make up for the shortfall in the earning potential immediately

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[25] *National Power Corporation v. Tiangco*, G. R. No. 170846, 06 February 2007, 514 SCRA 674.

[26] G.R. No. 164195, 12 October 2010, 632 SCRA 727.

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lost due to the taking, and the absence of replacement property from which income can be derived; interest on the unpaid compensation becomes due as compliance with the constitutional mandate on eminent domain and as a basic measure of fairness. (Emphasis supplied)

In the seminal case *Land Bank of the Philippines v. Natividad*,[27] **the Court rejected outright the contention** of Land Bank of the Philippines **that the compensation for property, subject of agrarian reform expropriation, should be based on the effectivity of the previous law** (Presidential Decree No. 27) on 21 October 1972. The Court **ruled that the compensation should be pegged to the time the property was taken in possession** in 1993 under the new CARL:

Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of PD 27, *ergo* just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of PD 27 but would take effect on the payment of just compensation.

Under the factual circumstances of this case, the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of Republic Act No. 6657 (RA 6657) before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, RA 6657 is the applicable law, with PD 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*.

Section 17 of RA 6657 which is particularly relevant, providing as it does the guideposts for the determination of just compensation, reads as follows:

> Sec. 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

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[27] G.R. No. 127198, 16 May 2005, 458 SCRA 411.

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> 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.

It would certainly be inequitable to determine just compensation based on the guideline provided by PD 27 and EO 228 considering the DAR's failure to determine the just compensation for a considerable length of time. **That just compensation should be determined in accordance with RA 6657, and not PD 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample**.

In this case, the trial court arrived at the just compensation due private respondents for their property, taking into account its nature as irrigated land, location along the highway, market value, assessor's value and the volume and value of its produce. This Court is convinced that the trial court correctly determined the amount of just compensation due private respondents in accordance with, and guided by, RA 6657 and existing jurisprudence.[28] (Emphasis supplied)

Applied to the instant case, the more just and equitable solution is to reckon the period of the taking from the date of the notice

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[28] See also *Land Bank v. Livioco*, G.R. No. 170685, 22 September 2010; *Land Bank v. J. L. Jocson and Sons*, G.R. No. 180803, 23 October 2009, 604 SCRA 373; *Land Bank v. Heirs of Asuncion Añonuevo vda. de Santos, et al.*, G. R. No. 179862, 03 September 2009, 598 SCRA 115; *DAR v. Tongson*, G.R. No. 171674, 04 August 2009; *Land Bank v. Carolina B. vda. de Abello, et al.,* G.R. No. 168631, 07 April 2009, 584 SCRA 342; *Land Bank v. Chico*, G.R. No. 168453, 13 March 2009, 581 SCRA 226; *Land Bank v. Pacita Agricultural Multi-Purpose Cooperative, Inc.*, G.R. No. 177607, 19 January 2009; *Land Bank v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108; *Land Bank v. Heirs of Eleuterio Cruz*, G.R. No. 175175, 29 September 2008, 567 SCRA 31; *Land Bank v. Heirs of Angel Domingo*, G.R. No. 168533, 04 February 2008, 543 SCRA 627; *Land Bank v. Spouses Hermosa*, G.R. No. 166777, 10 July 2007, 527 SCRA 181; *Lubrica v. Land Bank*, G.R. No. 170220, 20 November 2006, 507 SCRA 415.

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of coverage under the fifth approach, since this was the time that petitioner HLI was put on notice that its stock distribution option was defective and that its agricultural lands therein would be subject to compulsory coverage and direct land distribution under the CARL. It is argued that the time the SDOA was signed and/or the PARC Resolution was issued could be considered as the time petitioner HLI was given due notice that its agricultural lands would be subject of agrarian reform. This argument is undeniably unfair and contrary to uniform jurisprudence interpreting the constitutional dictum that just compensation in expropriations should approximate equivalent value that is real, substantial, full and ample. Landowners would be shortchanged if their real properties are taken by the State in exchange for compensation that is pegged at values two decades prior. In this case, unwarranted discrimination would be committed against petitioner HLI if the agricultural lands to be distributed to the FWBs are to be valued at their 1989 levels.

To be sure, the fourth approach explained above may approximate the value of the property at the date of the Notice of Coverage, but would unnecessarily call for meticulous accounting and valuation of improvements. Although the fourth approach would continue to peg the value of the agricultural land to its 1989 level, it recognizes the passage of an inordinate length of time and hopes to mitigate its unjust effects by adding the payment of interest. The award of interest may alleviate the hardship caused by depriving petitioner HLI of the current and fair market value of the property under the prevailing laws and rules, but the order for it to pay rentals for the lands from 1989[29] would negate the benefit of any interest, if not possibly saddle it with a heavier financial burden.

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[29] "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 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." (Separate Opinion of Justice Brion)

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Although Justice Brion reckoned the period for the valuation of the land to 21 November 1989, he recognized petitioner HLI's entitlement to the value of the improvements that it has introduced into the agricultural lands for the past twenty years. The proposition is akin to the Civil Code[30] situation where a landowner opts to acquire the improvements introduced by a builder in good faith and must necessarily pay their value.[31] Hence, although the land of petitioner HLI is expropriated by the government, there is a need for compensation for the introduction of the improvements actually installed by petitioner

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[30] "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." (CIVIL CODE, Art. 448)

"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." (CIVIL CODE, Art. 546)

"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." (CIVIL CODE, Art. 546)

[31] "Where the builder, planter or sower has acted in good faith, a conflict of rights arises between the owners, and it becomes necessary to protect the owner of the improvements without causing injustice to the owner of the land. In view of the impracticability of creating a state of forced co-ownership, the law has provided a just solution **by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity**, or to oblige the builder or planter to pay for the land and the sower the proper rent. He cannot refuse to exercise either option. It is the owner of the land who is authorized to exercise the option, because his right is older, and because, by the principle of accession, he is entitled to the ownership of the accessory thing." (*Heirs of the Late Joaquin Limense, v. vda. De Ramos*, G. R. No. 152319, 28 October 2009, 604 SCRA 599 citing *Rosales v. Castelltort*, 472 SCRA 144, 161 [2005]).

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HLI, such as roads and other infrastructure, which have evidently improved the value of the property, aside from its appreciation over time. In recognizing the necessity for compensating petitioner HLI for their improvements, pegging the values to its 1989 levels will not be as severely confiscatory, if the value will be included as part of the just compensation to be paid. I would even be willing to accept the formulation proposed by Justice Brion since it would, to a lesser amount, approximates a fair market value of the property. But to simply evaluate the property's worth to outdated levels and exclude entirely the improvements made and the market appreciation of the lands in all the 17 years that petitioner HLI invested in the lands is not even supportable by the Civil Code.

Furthermore, identifying and valuing the improvements in Hacienda Luisita introduced by petitioner HLI may pose another source of conflict that may protract the case further. In addition, their naked costs and book values may fail to account for the intangible effects and the appreciation of values that may result from improvements, such as roads. To obviate these possible deficiencies in approximating the fair value of the farm lands, their real value at the time of the notice of coverage, following the DAR's formula, would render a better accounting result and preclude complicated calculations.

The approximation of fair value of the expropriated lands as just compensation is not meant to increase the burdens of payment by the qualified FWBs. **When the framers of the Constitution originally determined that just compensation, as understood in prevailing jurisprudence, was to be given to landowners in agrarian reform expropriation, the point was clarified that the amounts to be awarded to the landowners were not the exact figures that would in turn be paid by the farmers, in other words it should be subsidized**:

MR. RODRIGO: I was about to say what Commissioner Concepcion said. I just want to add that the phrase "just compensation" already has a definite meaning in jurisprudence. And, of course, I would like to reiterate the fact **that "just compensation" here is not the amount paid by the farmers. It is the amount paid to the owner,**

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and this does not necessarily have to come from the farmer. **The State should subsidize this and pay a just compensation to the owner and let the tenant farmer pay the state in accordance with the capacity of the farmer. If there is a difference let the State subsidize the difference**. … (Emphasis supplied)[32]

Thus, the original intention was that there should be **no strict correspondence** between the just compensation due to the landowner and the amounts to be paid by the farmworkers:

MR. MONSOD: However, as far as the source of the repayment is concerned, it may be that the famer is not able to afford the just compensation. This is a proper area where the State can come in, if it intends to give support or subsidy. That may be called for in order that the farmer will get a chance to own a piece of land. **Besides, there might not be a strict correspondence between a just compensation for the landowner and the capacity of the farmer to pay.**

MR. DAVIDE: As a matter of fact, the opening sentence of my proposal states: "It is the duty of the State." This means that the State should first expropriate, distribute and **then the government will deal with the farmers or farmworkers as to the mode of reimbursement or refunding the amount that the government had paid to the landowner, which should be a more just and equitable arrangement for the farmers and the farm workers**. It is now a duty.

MR. MONSOD: That is why I believe that his is consistent with the comments of Commissioner Tadeo because the objective of the agrarian reform is equity. It is really not efficiency or production, but the first objective is equity. In that sense, the State may have to step in to help the farmer pay for the land. (Emphasis supplied)[33]

Hence, there was an acknowledgement of the limited capacity of the farmers to pay for value of the expropriated lands under a willing-buyer-willing seller formulation. Thus, the obligation

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[32] Minutes of the Deliberations of the Constitutional Commission, (07 August 1986), at pp. 17-18.

[33] Minutes of the Deliberations of the Constitutional Commission, (05 August 1986), p. 703.

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was imposed on the State to subsidize payments in order to support the financial arrangements of the country's agrarian reform program. The fair value paid to the landowner for the distributed lands is to be shouldered by the State, in line with the right to just compensation and the limitations on the state power of expropriation. However, a different principle governs when it is the State that will receive amortization payments from the farmers for expropriated lands, namely the policy of social justice. Hence, the State's function is to subsidize the repayment schemes and offer terms that are affordable to the farmers considering their limited capacity to pay. The burden is now on the State to consider programs that are more financially viable in order to balance the rights of the landowners to just compensation with the social justice demands of the poor farmworkers with limited capabilities to simultaneously pursue agricultural enterprises and pay for the lands.

Petitioner HLI, as a corporate landowner, must undoubtedly share the costs and burdens of the country's type of agrarian reform scheme by surrendering the agricultural lands to the government for distribution to the qualified FWBs. But in order to come within the constitutional directives on eminent domain and just compensation, its sacrifice cannot be made to be overly burdensome as to force them to receive but a small fraction of current market values for its expropriated properties. In ruling for the payment of just compensation to petitioner HLI under the fifth approach — which is pegged to the date of notice of coverage under the prevailing laws, rules and jurisprudence — the Court will perform its obligation to uphold the dictates of social justice in distributing the lands in Hacienda Luisita to the qualified FWBs, but not to the extent of sacrificing the right of landowners and consigning them to accept the cheapest value for their lands. In *Land Bank of the Philippines v. Chico*,[34] the Court, through retired Justice Eduardo Nachura, succinctly summarized this point in this wise:

The **Comprehensive Agrarian Reform Program** was undertaken primarily for the benefit of our landless farmers. However, **the**

[34] G.R. No. 168453, 13 March 2009, 581 SCRA 226.

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undertaking should not result in the oppression of landowners by pegging the cheapest value for their lands. Indeed, the taking of properties for agrarian reform purposes is a revolutionary kind of expropriation, but not at the undue expense of landowners who are also entitled to protection under the Constitution and agrarian reform laws. Verily, to pay respondent only ₱10,000.00 per hectare for his land today, after he was deprived of it since 1994, would be unjust and inequitable. (Emphasis supplied)

Sale of Distributed Lands to Third Parties

In my earlier Dissenting Opinion, I forwarded the position that once the agricultural lands are transferred and awarded to the qualified FWBs, they, as absolute landowners, should be able to make full use of the properties, including the right to sell them, considering the lapse of the ten-year prohibition under the CARL:

> 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 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 Award (CLOA) or Emancipation Patent (EP) before being allowed to transfer the land 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,

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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; and reclassifying them for residential, commercial, industrial or institutional use. 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. (Emphasis supplied)

Concerns have been expressed that such a reading of the provisions of the CARL shows an indifference to the retention limits imposed, and that strict adherence to the law and the rules would dictate that the ten-year period should commence only upon the issuance and registration of the emancipation patent or certificate of land ownership award. However, considering the protracted litigation in this case and the years that the FWBs have been made to wait, I maintain that absolute

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ownership be immediately transferred to them in this case, with the full freedom to transfer or sell the properties, if they so choose.

The rationale for the 10-year prohibition on the sale of the transferred land may have been laudable at the starting point of the CARL but it comes close to oppressing agrarian reform beneficiaries 20 years hence. The aim of the prohibition then was to ensure that agricultural lands would be retained by those who were awarded by government and to ensure their continued possession and enjoyment of the property for the purpose of cultivation.[35] It was to preclude farmers from becoming "easy prey to those who would like to tempt [them] with cash in exchange for inchoate title over the same" and thus allow non-tillers of the soil to acquire title over agricultural lands.[36] Hence, lands acquired under the CARL were sought to be retained for a decade as properties for purposes of agricultural cultivation, even when they were transferred or sold to other owners. However, significant time has passed and considerable developments have occurred in the neighboring areas of formerly exclusive agricultural lands, thus requiring a review of the initial assumptions. Are the acquired lands more economically beneficial or feasible as agricultural lands? Will these properties become more financially viable for other economic uses? Do the FWBs want to remain as farmers forever, or do they want to branch out to other profitable enterprises or interests? With these compelling questions, the current realities confronting the FWBs require a careful and considerate study of the application and interpretation of the laws that would extend their maximum benefit and uphold their welfare.

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[35] "The object of agrarian reform is to vest in the farmer-beneficiary, to the exclusion of others, the rights to possess, cultivate and enjoy the landholding for himself; hence, to insure his continued possession and enjoyment thereof, he is prohibited by law to make any form of transfer except only to the government or by hereditary succession." (*Maylem v. Ellano*, G.R. No. 162721, 13 July 2009, 592 SCRA 440, citing *Torres v. Ventura*, 187 SCRA 96 [1990])

[36] *Estate of the Late Encarnacio vda. de Panlilio v. Dizon*, G.R. No. 148777 & 157598, 18 October 2007, citing *Torres v. Ventura*, 187 SCRA 96 (1990).

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The qualified FWBs in Hacienda Luisita should not only be confined to a ten-year license to farm the distributed lands, but should be able to enjoy all the rights to the land and fruits thereof. As full owners, the qualified FWBs who would be awarded lands must be afforded the entire gamut of opportunities to make use of the land as their circumstances and capabilities see fit. Nothing prevents them from continuing to till the agricultural land, whether individually or as a collective, as in the case of a cooperative. However, the same freedom should be afforded to them when they see that the best economically and financially advantageous use of the property is to sell portions of the property, especially in this case in which developments in the neighboring lots have greatly enhanced the value thereof.

To prolong for a decade the FWBs' enjoyment of the right to transfer and dispose of portions of the agricultural lands is to continue to bind them to the land. Without any assistance from the government or other civic organizations, FWBs may be awarded a possible pyrrhic legal victory, in which they own the land but without the financial means to till and cultivate it. Freeing them from the strict application of the ten-year prohibition under the CARL, will allow them full discretion to dispose and transfer portions of the property as they see fit and as are suitable to their needs. This will release locked-up capital in the soil and enable the qualified FWBs to use the proceeds thereof in other productive enterprises or in the procurement of other assets necessary for tilling the remaining land.

To insist that the rights of the FWB sleep for a period of ten years is unrealistic and may seriously deprive them of real opportunities to capitalize on and maximize the victory of direct land distribution. The restriction will limit their access to credit markets, as studies in land reform have shown. In a World Bank Policy Research Report,[37] Klaus Deininger identified the counterproductive effects of transferability restrictions:

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[37] Klaus Deininger, Land Policies for Growth and Poverty Reduction (June 2003), pp. 122-124 available at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2003/08/08/000094946_0307250400474/Rendered/PDF/multi0page.pdf last visited on 11 November 2011.

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Governments have frequently imposed restrictions on the transferability of land through the sales market on beneficiaries of land reform or settlers on formerly state-owned land to prevent them from selling or mortgaging their land. Such a restriction could be justified as a temporary measure to prevent the beneficiaries of a land reform program from selling their land based on inadequate information or in response to temporary imperfections in product and financial markets. **Even temporary restrictions on land mortgages can be counterproductive, however, as they would deprive beneficiaries from accessing credit during the establishment phase when they need it the most**. **The literature has reported cases where farmers were forced to resort to less efficient arrangements, such as usufruct mortgaging and use of wage labor, to gain access to credit**. Investigators have also noted this problem in Korea and **in the Philippines**, **where restrictions on land market activity have limited investment**. **Land received under land reform in Chile was freely transferable, and Jarvis (1985) views this as one of the key ingredients of its success**. Precluding land reform beneficiaries from sales in the medium term would reduce efficiency by preventing adjustments in response to differential beneficiary abilities, and could, if combined with rental restrictions, cause large tracts of land to be underutilized. **The danger of beneficiaries' undervaluing their land could be reduced through other means, and the goal of preventing small landowners from selling out in response to temporary shocks would be better served by ensuring that they have access to output and credit markets and to technical assistance, and by providing safety nets during disasters to avoid distress sales**.

Restrictions on land sales markets can increase the costs associated with certain actions, but if the rewards from circumventing them are high enough, will not eliminate them. For example, owners who have no desire to farm tend to disregard the temporary prohibition of land sales in Nicaragua and circumvent it by long-term rentals with the promise to sell, which because of the associated insecurity leads to much lower land prices.

A number of countries have combined initial privatization of land with a moratorium on land sales to prevent the possibility that, after decades of collectivism, new landowners' exposure to land sales markets may cause them to dispose of their assets without being aware of their true value, leading to negative social consequences and concentration of land in the hands of speculators. The example

of some CIS countries suggests that such concerns may not be completely unfounded. Moratoriums may be justified as a way of allowing new landowners to acquire better knowledge of their assets and prevent quick sell-offs at unrealistic prices in an environment where markets work imperfectly. In Albania this restriction has been combined with a right of first refusal, whereby before consummating a land sale to an outsider, neighbors or village members must be given the opportunity to acquire the land at the same price for some period. This has few adverse consequences and can help allay communities' fears of being bought out by outsiders.

General imposition of restrictions on the transferability of land by sale is unlikely to be enforceable or beneficial. In many situations such restrictions will have little impact in practice because of the absence of land or credit markets. Where appropriate institutions for intragroup decisionmaking are available, permitting the community to limit sales and giving it the right to decide whether to eventually allow sales to outsiders may be an acceptable compromise between equity and efficiency concerns. Restrictions on the marketability of land are common in many developing countries, and many customary or communal systems prohibit the sale of land to outsiders. Some countries, such as Bolivia, have a minimum holding size that cannot be mortgaged or alienated. While these regulations impose some losses in terms of foregone credit market access, they can also help to reduce undesirable social externalities from driving some people into destitution. As long as they are the product of a conscious choice by the group and the group has clear and transparent mechanisms for changing the land tenure regime, they are unlikely to be harmful. As traditional social ties loosen or the efficiency loss from the sales restriction becomes too high, groups are likely to allow sales to outsiders in some form. The recent constitutional reform of the land rights system in Mexico allows for free sales and rental within all *ejidos* and for decisionmaking by majority vote on whether to eliminate the restriction on sales to outsiders. An initial evaluation of the reforms suggests that with appropriate technical assistance communities are clearly able to make such decisions. (Emphasis supplied; citations omitted)

Imposing a ten-year restriction will decrease the desirability of these farm lands as collateral and will even increase the transaction costs for private creditors to extend farm loans to the small qualified FWBs. In fact, in the experience of other

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countries like Venezuela, the government's imposition of transferability restrictions have compelled desperate farmers to resort to selling their awarded farm lands in the black market way below their fair value and have made "poor farmers even poorer":

> For example, in an attempt to curb formerly-landless peasants selling their newly acquired lands back to the large landowners, the INTI [National Land Institute] will hold the land title in an escrow account for three years. Once three years have passed, with the new landowner living and cultivating the land during that time period, title will pass to the landowner free from any government enacted restrictions that initially made the land inalienable. According to critics of the Chavez administration, these government restrictions on land transfers are tantamount to providing only licenses to farm the land, rather than actual ownership of it. Moreover, excessive restrictions on the alienability of land may actually burden the new farmers more, especially since they will be deprived of access to credit to improve their land and expand its size when it is economically prudent. **Desperate farmers will have to resort to selling their farmland at 40 to 60 percent below its fair market value on the black market due to the government restrictions currently in place**. **And with poor farmers having to sell their land at such a low level, such a provision made to assist the destitute will unintentionally "lead to making poor farmers even poorer than they otherwise would be**."[38] (Emphasis supplied; citations omitted)

Considering the perceived inadequacy of public funds to provide the qualified FWBs access to farm credits and loans to finance the cultivation of the awarded lands, it is necessary to afford them the prospect of soliciting private funds and loans to cultivate and develop their lands by freeing them from the 10-year prohibition period. At this delayed stage in the agrarian reform program covering Hacienda Luisita after the failed stock distribution mechanism, the protection afforded by inflexible restriction on the alienability of the awarded lands is greatly outweighed by the market opportunities available to the qualified FWBs if full ownership is given to them.

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[38] Andy Mielnik, "*Hugo Chavez: Venezuela's New Bandit or Zorro*," 14 L. & Bus. Rev. Am. 591 (2008).

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The agrarian reform policies placed in the Constitution and as implemented in the CARL were laudable efforts to address social injustice. However, Fr. Joaquin Bernas, S. J., a member of the Constitutional Commission, compared the previous attempts at agrarian reform and underscored the crucial role of effective public financing in the success of the program.[39] As aptly captured by then Senator Heherson Alvarez, funding became the defining line that would determine whether the promises of agrarian reform would remain a dream or become a reality:

> Where will the funding come from? Without going to an involved accounting let me say that funding for this program will come from various sources already identified, among which are proceeds from the Assets Privatization Trust, the Presidential Commission on Good Government, the Economic Support Fund, PAGCOR, Philippine Charity Sweepstakes Office, the sales of government properties in Tokyo and if need be, from foreign sources or foreign borrowings.
>
> **Funding and cost were thoroughly considered in this bill in weeks, even months, as it became clear that implementability went hand in hand with cost, our Committee, in collaboration with financing institutions of the Government, studiously pored over details that drew the line between keeping agrarian reform a dream and making it a reality**.[40] (Emphasis supplied)

After the fall of the martial law regime and at the start of the new democratic society, a "window of opportunity" was presented to the State to determine and adopt the type of land and agrarian

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[39] "FR. BERNAS: I do not see the possibility of massive land reform unless the government somehow gets involved in the financings; and I think one of the reasons the past land reform program did not have the success that it gave the impression of having was precisely the fact that there was no effective financing system for it.

So all of these will have to be necessarily packaged into the land reform program." (Minutes of the Deliberations of the Constitutional Commission, [04 August 1986], p. 648)

[40] Sponsorship speech of Sen. Heherson Alvarez, chairperson of the Committee on Land Reform, Records of the Senate dated 26 June 1988, pp. 2975-2977.

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reform to be implemented.[41] The newly formed administration enjoyed a strong mandate from the people, who desired change and would support a sweeping agrarian reform measure to distribute lands. In this scenario, the State could have chosen a more revolutionary approach, introducing into its agrarian reform program a more "confiscatory element."[42] Following the examples of other revolutionary governments, the State could have resorted to simply confiscating agricultural lands under the claim of social justice and the social function of lands, with little need of payment of full just compensation.[43]

However, the framers of the Constitution and the legislators at that time chose a different path and employed a traditional

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[41] "Successful land reforms in this century have had many common characteristics. Often there is a 'window of opportunity' where land reform is possible. Land reform efforts necessitate significant political will to commit to change. In addition, grassroots support of the populace and threat of violent uprising can be an impetus for reform. The government must also have adequate financial resources or external support for the program. Successful land reforms, such as those in Japan, Taiwan, South Korea, Mexico, and certain states in India, have involved the mandatory expropriation of land, but with reasonable (although not full market value) compensation to the landowner." (Kristen Mitchell, "Market-Assisted Land Reform in Brazil: A New Approach to Address an Old Problem," 22 N.Y.L. SCh. J. Int'l & Comp. L. 557 [2003])

[42] "The bank's mission also called attention to the problem of 'just compensation' arguing that successful agrarian reform programmes have always 'included a confiscatory element.'" (James Putzel, A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES [Ateneo de Manila University Press 1992] p. 288)

[43] "The most successful land reforms have been traditional programs that used a mandatory redistribution mechanism, and they often occurred during periods of political instability. In these situations, authoritarian governments have been able to forcibly remove property from wealthy landowners. Based on this history, some scholars question the feasibility of mandatory redistribution in a full democracy. In particular, scholars have begun to question the contemporary applicability of the traditional land reform model in many developing countries where governments cannot afford expensive social programs, and where peace, industrialization, and foreign investment are seen as more important than shifting the power balances within the country." (Andre Sawchenko, "Choosing a Mechanism for Land Distribution in the Philippines," 9 Pac. Rim L. & Pol'y J. 681 [2000])

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land reform program, where landowners are paid approximately the full and fair market value of their expropriated properties. The competing interests of the influential landowners and the peasant agrarian unrest posed serious dilemmas to the nation's leaders and, in the end, resulted in an agrarian reform program that satisfied neither group:

> This campaign against agrarian reform placed Aquino in a very difficult situation. If in the first three months of the year Aquino had been forced to move more rapidly on land reform in response to peasant demands, these recent events had forced her to hesitate. Aquino was thus faced with a dilemma: either she decree agrarian reform and face the immediate threat of destabilization by those opposed to land reform, or she leave the task to Congress and perhaps forfeit legitimacy among the rural poor thereby precipitating the long-term destabilization of her government by fueling insurgency.[44]

The country thus bound itself to finance an ambitious and expensive land acquisition and redistribution scheme without the necessary public resources to fund it. The policy choice was made based on the examples of land reform in Japan, Taiwan, and South Korea,[45] which had adequate financial resources to fund a distributive land reform program.[46] Unfortunately, the country at that time was heavily burdened by foreign debt due to the excessive borrowings made during the Marcos regime. Worse, legislators pinned their hopes of the financial sustainability of the program on the future proceeds of Marcos ill-gotten wealth to be recovered by the Presidential Commission on Good

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[44] Simeon Gilding, AGRARIAN REFORM AND COUNTER-REFORM UNDER THE AQUINO ADMINISTRATION: STUDY IN POST-MARCOS POLITICS (1993), p.11.

[45] "MR. OPLE: … We all know, those who have taken a glance at the history of land reform in Japan, Taiwan and Korea, that the economic miracles that have taken place in those countries and have compelled the admiration of the whole world, to a large extent, were rooted in the earlier land reform program pursued by their governments. …" (Minutes of the Deliberations of the Constitutional Commission, [08 August 1986], p. 83)

[46] Kristen Mitchell, "Market-Assisted Land Reform in Brazil: A New Approach to Address an Old Problem," 22 N.Y.L. Sch. J. Int'l & Comp. L. 557 (2003).

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Government. That the country is still in the process of identifying and fully recovering these moneys from Marcos and his cronies only speak of the inadequate viability of the agrarian reform program. The unrealistic and naive expectations of financial self-sufficiency doomed the full implementation of a redistributive land reform.

For the Court to suddenly shift the burden to landowners 20 years after the government has chosen market value compensation over partial or total confiscation is to treat petitioner HLI with an uneven hand. The Court cannot simply reckon the valuation of the Hacienda Luisita properties from its 1989 levels based on the unspoken premise that the government does not possess sufficient public resources to pay the approximate fair market value of the expropriated lands. The framers of the Constitution, the legislators, and even this Court have long defined the concept of just compensation when the State exercises eminent domain that should apply squarely in land reform expropriation. The only plausible justification for antedating the valuation of the land to its 1989 levels would be the inability of the State to shoulder such amount. Yet, neither the PARC nor the DAR has shown in their Motion for Reconsideration in this case that the State has utter lack of available resources to shoulder such costs or is without any available schemes that would permit a staggered and affordable payment of just compensation to the landowner. Let the Court not pre-judge the ability or willingness of the government to pay just compensation under the same formula the latter applied to other agrarian reform cases.

Without any exceptional reason or circumstance obtaining, aside from a supposed lack of government funds (which has not been alleged by government), there is no apparent justification for denying petitioner HLI the fair market value of its property. To materially uplift the conditions of qualified FWBs who have been awarded agricultural lands, at the expense of imposing upon petitioner HLI old and low valuation levels, may have been permissible during those revolutionary times of 1987, but it has now become unacceptable due to standards that Congress and this Court itself have uniformly applied.

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Inapplicability of the Operative Facts Doctrine

A brief disgression. The resort to the secret voting option under the first or third approach is premised on a misapplication of the operative facts doctrine. The majority has now abandoned the actual application of the operative facts doctrine to the HLI SDOA after realizing that indeed, as I had earlier stated, the most that the FWBs can hope to control in HLI is a third of the shares. Considering the outcome of the new voting, any discussion on the operative facts doctrine would therefore be primarily academic. But the new *ponencia* continues to insist that its description of the operative facts doctrine is correct. A clarification must be made to correctly place the application of the doctrine.

The general rule is that an unconstitutional law has no force and effect — it produces no rights, imposes no duties and affords no protection.[47] Hence, the pronouncement of unconstitutionality by the Court **retroacts to all acts undertaken between the effectivity of the law and the declaration of its invalidity.**

The doctrine of operative facts serves as an **exception** to this general rule.[48] The declaration of a law or an executive act as unconstitutional is given **limited retroactive application** in cases in which acts or circumstances may have arisen in the operation of the invalidated law prior to the pronouncement of invalidity. Considerations of equity would avert the injustice of nullifying the interim effects of a person's good faith reliance on the law's provisions. The cases involving the unconstitutionality of the debt moratorium laws and the non-payment of debts during the suspensive period prior to the declaration best exemplify the application of the exceptional doctrine of operative facts.[49] In these instances, equity interests

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[47] *Planters Products, Inc. v. Fertiphil Corp.*, G.R. No. 166006, 14 March 2008, 548 SCRA 485.

[48] *Yap v. Thenamaris Ship's Management and Intermare Maritime Agencies, Inc.*, G.R. No. 179532, 30 May 2011.

[49] *Manila Motor Co., Inc., v. Flores*, G.R. No. L-9396, 16 August 1956, 99 Phil. 738; *De Agbayani v. Philippine National Bank*, G.R. No.

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of the parties surpass the concern over the retroactive application of the law's unconstitutionality.

The application of the operative facts doctrine to the invalidated SDOA is being justified on the ground that what is being nullified is the **PARC's prior approval of the SDOA**, which is an executive act. According to the argument, since petitioners HLI and the FWBs have relied for the past two decades on the validity of the SDOA and accumulated benefits therefrom, it would be prejudicial to their interests if their prior acts would be wiped clean by the nullification of the SDOA. The reasoning is strained.

No law or executive act with respect to stock distribution options has been declared unconstitutional by the Court. For the operative facts doctrine to have been applied, a law or an executive act that was made effective for a temporary period should have been invalidated by the Court for being inherently in contravention of the Constitution and, thus, without force and effect from its very inception. Except for the previous Separate Opinions of Chief Justice Renato Corona and Justice Jose Mendoza, a majority of the Court generally refrained from making any declaration as to the constitutional validity of a stock distribution option on the ground that it is not the *lis mota* of the present Petition, and that the challenge was not timely made, among others.

What the Court invalidated was the SDOA, which was simply an application of the law, and not any statute or executive act, on the basis of its having violated the spirit and intent of the existing law. The invalidated PARC Resolution that approved the SDOA of Hacienda Luisita did not rise to the level of a legislative statute or executive act, in which the operative facts doctrine would become applicable.

In *Municipality of Malabang v. Benito*,[50] the Court recognized the applicability of the operative facts doctrine to an executive

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L-23127, 29 April 1971, 38 SCRA 429; *Republic v. Herida*, G.R. No. L-34486, 27 December 1982, 119 SCRA 411; *Republic v. Court of First Instance*, G.R. No. L-29725, 27 January 1983, 120 SCRA 154.

[50] G.R. No. L-28113, 28 March 1969, 27 SCRA 533.

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order (Executive Order No. 386) issued by then President Carlos P. Garcia, creating the municipality of Balabagan out of *sitios* and *barrios* of the municipality of Malabang,[51] based on earlier jurisprudence holding that the executive did not have authority to create municipal corporations.[52] In his Concurring Opinion, then Justice Enrique Fernando made explicit the application of the doctrine of operative facts only to executive acts that are quasi-legislative in nature, specifically in the creation of municipal corporations by the executive and the subsequent declaration of unconstitutionality by the judiciary:

Nothing can be clearer therefore in the light of the two above cases than that a previous declaration of invalidity of legislative

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[51] "Executive Order 386 'created no office.' This is not to say, however, that the acts done by the municipality of Balabagan in the exercise of its corporate powers are a nullity because the executive order 'is, in legal contemplation, as inoperative as though it had never been passed.' For the existence of Executive Order 386 is 'an operative fact which cannot justly be ignored.'" (*Id.*)

[52] "Then, also, the power of control of the President over executive departments, bureaus or offices implies no more than the authority to assume directly the functions thereof or to interfere in the exercise of discretion by its officials. Manifestly, such control does not include the authority either to abolish an executive department or bureau, or to create a new one. **As a consequence, the alleged power of the President to create municipal corporations would necessarily connote the exercise by him of an authority even greater than that of control which he has over the executive departments, bureaus or offices**. In other words, Section 68 of the Revised Administrative Code does not merely fail to comply with the constitutional mandate above quoted. Instead of giving the President less power over local governments than that vested in him over the executive departments, bureaus or offices, it reverses the process and does the exact opposite, by conferring upon him more power over municipal corporations than that which he has over said executive departments, bureaus or offices.

… … …

WHEREFORE, the Executive Orders in question are hereby declared null and void *ab initio* and the respondent permanently restrained from passing in audit any expenditure of public funds in implementation of said Executive Orders or any disbursement by the municipalities above referred to. It is so ordered." (*Pelaez v. Auditor General*, G.R. No. L-23825, 24 December 1965, 15 SCRA 569)

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acts would not be bereft of legal results. **Would that view hold true of nullification of executive acts?** There might have been doubts as to the correct answer before. There is none now.

A judicial decision annulling a presidential exercise of authority is not without its effect either. That much is evident from the holding now reached. The act stricken down, whether proceeding from the legislature or the Executive, could in the language of the *Chicot County* case, be considered, prior to the declaration of invalidity, as "an operative fact and may have consequences which cannot justly be ignored."

Thus the frontiers of the law have been extended, a doctrine which to some may come into play when a statute is voided is now considered equally applicable to a Presidential act that has met a similar fate. Such a result should not occasion surprise. That is to be expected.

There would be unjustified deviation from the doctrine of separation of powers if a consequence attached to the annulment of a statute is considered as not operative where an executive order is involved. The doctrine of co-equal or coordinate departments would be meaningless if a discrimination of the above sort were considered permissible. The cognizance taken of the prior existence of an enactment subsequently declared unconstitutional applies as well to a Presidential act thereafter successfully assailed. There was a time when it too did exist and, as such, a fact to be reckoned with, **though an infirm source of a legal right, if, as subsequently held, considered violative of a constitutional command.** (Emphasis supplied)

The PARC Resolution, while an executive act, is not an exercise of a quasi-legislative power by the executive, but a mere wrongful application of the law on stock distribution options under the CARL. The CARL provided the norms used to evaluate any stock distribution option and this was applied by the PARC in deciding whether to approve the SDOA. Hence, it was the interpretation of the PARC when it mistakenly approved the SDOA of petitioner HLI and the FWBs that has been declared invalid, and not the enabling law itself. The source of infirmity in this case lies not in the provisions of the CARL allowing stock distribution options, but in the erroneous approval previously granted by the PARC. The good faith reliance of petitioner

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HLI with respect to the approval (albeit erroneous) of its SDOA does not justify the operation of the doctrine, since no less than this Court has found that the SDOA and its approval were in utter violation of the intent of the CARL on stock distribution options.

Furthermore, it would be incongruous to avoid the constitutionality issue of the stock distribution mechanism under the CARP on the ground that it is not the *lis mota* of the case, yet at the same time, invoke the operative facts doctrine. There is simply no room for the application of operative facts doctrine, absent an unconstitutionally invalid legislative or executive act.

The operative facts doctrine can only come into play as a rule of **equity** in cases where there is a vacuum in the law created by the subsequent declaration of nullity by the Court. In those instances where the operative facts doctrine was used (*i.e.*, debt moratorium cases), the unraveling of the effects of the declaration of unconstitutionality resorted to a dearth in the law and the need for the courts to provide guidance as to its retroactive application. **In this case, no such vacuum exists, as in fact the CARL itself provides for the ultimate consequence when a stock distribution plan or option is eventually invalidated - direct land distribution**.[53] The Court therefore need not exercise its equity jurisdiction.

Guiding Principles for the Operational Steps

I maintain that the **outright distribution of the agricultural lands in Hacienda Luisita to the qualified FWBs** should be immediately ordered owing to the absolute nullification of the SDOA. Considering the multilayered issues of implementation surrounding the case and imposed on the DAR, it is best to offer some guiding principles and values when executing the Court's orders in this landmark case.

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[53] "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)

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1. *Scope of Covered Lands*

DAR shall first determine which of the lands in Hacienda Luisita previously owned by both petitioner HLI and TADECO should be included in the compulsory coverage, including the identification of the improvements previously introduced by the corporate landowners.

As previously discussed,[54] the nullification of the SDOA brings into question the preliminary arrangements made by petitioner HLI, TADECO and the qualified FWBs, specifically the unilateral decision of TADECO to segregate and select which of its lands (totaling 6,443 hectares) will be transferred to petitioner HLI for purposes of the SDOA (4,916 hectares), and which of those it will keep for itself (1,527 hectares). Whether the sizeable area of 1,527 hectares of farm lands should have been excluded from the SDOA at the time of its execution on 11 May 1989, is best determined by the DAR.

The lands determined by the DAR to be subject of compulsory coverage shall, nonetheless, exclude the following lands:

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[54] "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. 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." (Dissenting Opinion)

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a. The 300 out of the 500 hectares of converted lands, which are now titled in the names of LIPCO and RCBC, both of whom are considered innocent purchasers in good faith;

b. The 80 hectares of land purchased and acquired by the Bases Conversion Development Authority for the construction of a portion of the Subic-Clark-Tarlac Expressway; and

c. All homelots already awarded to the qualified FWBs.

2. *Preliminary Valuation of the Lands*

Based on its own rules and formula, DAR shall give a preliminary and objective valuation of the covered lands, whose values shall be pegged to the time of the Notice of Coverage issued on **02 January 2006**. This valuation is, of course, subject to a determination of just compensation by the proper court in case of disagreement.

Accounting and Compensation

Thereafter, DAR shall also make a factual determination of the values and amounts of benefits actually received by the qualified FWBs under the SDOA, including but not limited to the following:

a. Three percent (3%) total gross sales from the production of the agricultural lands

b. Homelots actually awarded to qualified FWBs

c. Any dividends received by qualified FWBs

d. The proceeds of the sale of the 300-hectare converted land and SCTEX land, if any, distributed to the FWBs

However, petitioner HLI shall have no claim over any salary, wage or benefit given to the farmworker, and neither shall the latter, qualified or otherwise, be required to return the same, since they received those benefits for services rendered in an employee-employer relationship, and not under the relationship established under the SDOA. However, all FWBs shall surrender all their shareholdings in petitioner HLI to the corporation.

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Thereafter, the DAR shall calculate the amounts due to each of the parties, namely, petitioner HLI, Luisita Realty Corporation (LRC) and the qualified FWBs. These amounts shall be offset one another for purposes of convenience in order to arrive at a single amount to be paid:

Amounts due to petitioner HLI/LRC	**Amounts due to qualified FWBs**
a. The value of the total lands subject of compulsory coverage, excluding the 300-hectare converted lands of LIPCO and RCBC and the 80 hectares of SCTEX lands;	
b. The value of the 200-hectare converted lands, which shall be awarded to LRC;	
c. The 3% of the purchase price of the 300-hectare converted lands given to FWBs;	a. The purchase price of the 300-hectare converted lands; and
d. The 3% of the purchase price of the SCTEX lands, and the cost of titling and other expenses;	b. The price paid by the government for the 80-hectare SCTEX lands.
e. The 3% of total gross sales from the production of agricultural lands given to the FWBs;	
f. The values of the homelots awarded to the FWBs;	
g. Any dividend actually received by the FWBs.	

After determining the just compensation due to petitioner HLI, TADECO and LRC, the DAR shall settle the amount with the qualified FWBs under an affordable program or scheme

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that takes cognizance of their ability to pay, under the existing rules and procedures.

3. *Support Services*

In order to ensure that the qualified FWBs can maximize the use of the lands awarded to them, the DAR, in the performance of its mandate, shall provide support services to them, including but not limited to adequate agricultural credit, technical assistance, and enhanced market infrastructures to improve the delivery and sale of their agricultural produce.

True agrarian reform must not be limited to the equitable redistribution of lands, but shall encompass the extension of supplemental public services that will enable the FWBs of Hacienda Luisita to realize and capitalize on the full potential of the lands given to them.

EPILOGUE

Twenty years after the CARL was issued and the hope of farmers and farmworkers across the country was renewed, the fulfillment of the promise of a sweeping agrarian reform program in the country to spur agricultural and economic growth has remained elusive. Although there have been instances of a successful redistribution of land, they are too few to have had a positive and appreciable impact in uplifting farmers across the nation. The main obstacles to the success of our agrarian reform program are its lack of financial viability and the lack of adequate public resources to ensure full implementation.

The wide gap between the just compensation due to the landowner and the ability of the farmer-beneficiaries to pay was intended to be subsidized by the State.[55] Despite the identification of the public resources that would be used by the

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[55] "MR. RODRIGO: I was about to say what Commissioner Concepcion said. I just want to add that the phrase 'just compensation' already has a definite meaning in jurisprudence. And, of course, I would like to reiterate the fact that 'just compensation' here is not the amount paid by the farmers. It is the amount paid to the owner, and this does not necessarily have to come

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government under the CARL,[56] these proved elusive or insufficient to successfully finance the costly agrarian reform program in the entire country. The result was the stifling of crucial developments in agriculture in the rural areas, and continuing agrarian unrest among the farmer-beneficiaries, who have remained destitute and unable to improve their families' quality of life.

In doing right by the qualified FWBs in Hacienda Luisita by ordering the distribution of the land in this case, the government must now face the current economic difficulties and devise creative solutions and programs for moving forward. The legal victory that the qualified FWBs have secured from this Court in awarding them the lands that they have tilled will only be felt if the State,

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from the farmer. **The State should subsidize this and pay a just compensation to the owner and let the tenant farmer pay the state in accordance with the capacity of the farmer. If there is a difference let the State subsidize the difference**. …" (Minutes of the Deliberations of the Constitutional Commission, [07 August 1986], at pp. 17-18)

[56] "The initial amount needed to implement this Act for the period of ten (10) years upon approval hereof shall be funded from the Agrarian Reform Fund created under Sections 20 and 21 of Executive Order No. 229.

Additional amounts are hereby authorized to be appropriated as and when needed to augment the Agrarian Reform Fund in order to fully implement the provisions of this Act.

Sources of funding or appropriations shall include the following:

a) Proceeds of the sales of the Assets Privatization Trust;

b) All receipts from assets recovered and from sales of ill-gotten wealth recovered through the Presidential Commission on Good Government;

c) Proceeds of the disposition of the properties of the Government in foreign countries;

d) Portion of amounts accruing to the Philippines from all sources of official foreign grants and concessional financing from all countries, to be used for the specific purposes of financing production credits, infrastructures, and other support services required by this Act;

e) Other government funds not otherwise appropriated.

All funds appropriated to implement the provisions of this Act shall be considered continuing appropriations during the period of its implementation." (CARL, Sec. 63)

especially the DAR, extends all the necessary support that will allow them to maximize the agricultural outputs of the lands. Long-term vision, responsive action plans and strong political will are necessary to realize the social justice tenets of the Constitution in the country's agrarian reform program. These tenets are aimed at ending economic disparities in the rural areas and affording Filipino farmer-beneficiaries the tools required to become more productive citizens. There is no better opportunity to start on this path than with full support for the qualified FWBs of Hacienda Luisita. This support should include full freedom to make use of the land by allowing the qualified FWBs to deal with them as any property owner can, including the right to immediately transfer the same.

DISPOSITIVE PORTION

Although I agree with the majority with respect to the revocation of the Stock Distribution Option Agreement, the immediate compulsory coverage of the agricultural lands in Hacienda Luisita under the Comprehensive Agrarian Reform Law, and their immediate distribution to the qualified farmworker-beneficiaries, I maintain my dissent regarding the following: (a) the amount of just compensation to be awarded to petitioner Hacienda Luisita, Inc., and Tarlac Development Corporation should be reckoned from the fair market value under the law, rules and jurisprudence, specifically as of the date of the issuance of the Notice of Coverage on 02 January 2006; (b) the 10-year limitation on the transferability of the awarded agricultural lands is no longer applicable, and the qualified farmworker-beneficiaries should be allowed to sell or transfer the properties, if they so desire; and (c) that the benefits received by the qualified FWBs be offset by the amount of just compensation due to petitioner Hacienda Luisita, Inc., Tarlac Development Corp., and Luisita Realty, Corp.

Thus, I maintain my previous Opinion on the following points:

1. Agricultural lands covered by the Comprehensive Agrarian Reform Law and previously held by the Tarlac Development Corp., including those transferred to petitioner Hacienda Luisita, Inc., shall be subject to compulsory coverage and immediately

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distributed to the 6,296 original qualified farmworker-beneficiaries who signed the Stock Distribution Option Agreement; 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 Luisita Industrial Park Corp., (LIPCO) and Rizal Commercial Banking, Corp., (RCBC);

b. 80 hectares of Subic-Clark-Tarlac Expressway (SCTEX) land; 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, which shall be based on their fair market value as of 02 January 2006, to be determined by the Department of Agrarian Reform; petitioner HLI shall not be held liable for the payment of any rentals for the use of the property with final turn-over of the lands to the qualified FWBs.

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 any of the 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

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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;

b. The value of the 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.

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 the SDOA was executed on 11 May 1989, but excluding those directed to be excluded as stated above. This means that the unilateral designation of those lands by TADECO, of which only 4,916 hectares were counted as the farmers' agricultural land contribution to the SDO is to be disregarded and a new assessment is to be made by the DAR.

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 Hacienda Luisita's exact land area that shall be subject to compulsory coverage in accordance with the Decision.

Petitioner HLI is **REQUIRED** to render a complete accounting and to 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 petitioner HLI's liabilities to the qualified

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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 Corporation 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.