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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[G.R. No. 176579. June 28, 2011]

WILSON P. GAMBOA, *petitioner, vs.* **FINANCE SECRETARY MARGARITO B. TEVES, FINANCE UNDERSECRETARY JOHN P. SEVILLA, AND COMMISSIONER RICARDO ABCEDE OF THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) IN THEIR CAPACITIES AS CHAIR AND MEMBERS, RESPECTIVELY, OF THE PRIVATIZATION COUNCIL, CHAIRMAN ANTHONI SALIM OF FIRST PACIFIC CO., LTD. IN HIS CAPACITY AS DIRECTOR OF METRO PACIFIC ASSET HOLDINGS INC., CHAIRMAN MANUEL V. PANGILINAN OF PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLDT) IN HIS CAPACITY AS MANAGING DIRECTOR OF FIRST PACIFIC CO., LTD., PRESIDENT NAPOLEON L. NAZARENO OF PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, CHAIR FE BARIN OF THE SECURITIES EXCHANGE COMMISSION, and PRESIDENT FRANCIS LIM OF THE PHILIPPINE STOCK EXCHANGE,** *respondents.*

PABLITO V. SANIDAD and ARNO V. SANIDAD, *petitioners-in-intervention.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR DECLARATORY RELIEF TREATED AS PETITION FOR *MANDAMUS*. — At the outset, petitioner is faced with a procedural barrier. Among the remedies petitioner seeks, only the petition for prohibition is within the original jurisdiction of this court, which however is not exclusive but is concurrent with the Regional Trial Court and the Court of Appeals. The actions for declaratory relief, injunction, and annulment of sale are not embraced within the original jurisdiction of the Supreme Court. On this ground alone, the petition could have been dismissed outright. While direct resort to this Court may be justified in a petition for prohibition, the Court shall nevertheless refrain from discussing the grounds in support of the petition for prohibition since on 28 February 2007, the questioned sale was consummated when MPAH paid IPC ₱25,217,556,000 and the government delivered the certificates for the 111,415 PTIC shares. However, since the threshold and purely legal issue on the definition of the term "capital" in Section 11, Article XII of the Constitution has far-reaching implications to the national economy, the Court treats the petition for declaratory relief as one for *mandamus*. x x x It is well-settled that this Court may treat a petition for declaratory relief as one for *mandamus* if the issue involved has far-reaching implications. As this Court held in *Salvacion:* The Court has no original and exclusive jurisdiction over a petition for declaratory relief. **However, exceptions to this rule have been recognized. Thus, where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for *mandamus***.

2. POLITICAL LAW; JUDICIARY DEPARTMENT; JUDICIAL REVIEW; INSTANT PETITION RAISES A PURELY LEGAL ISSUE WHICH IS OF TRANSCENDENTAL IMPORTANCE TO THE NATIONAL ECONOMY AND MORE SIGNIFICANTLY FOR THE BENEFIT OF THE ENTIRE FILIPINO PEOPLE, TO ENSURE, IN THE WORDS OF THE CONSTITUTION, "A SELF-RELIANT AND INDEPENDENT NATIONAL ECONOMY EFFECTIVELY CONTROLLED BY FILIPINOS." — In the present case, petitioner seeks primarily the interpretation of the term "capital" in Section 11, Article XII of the Constitution. He prays that

this Court declare that the term "capital" refers to common shares only, and that such shares constitute "the sole basis in determining foreign equity in a public utility." Petitioner further asks this Court to declare any ruling inconsistent with such interpretation unconstitutional. The interpretation of the term "capital" in Section 11, Article XII of the Constitution has far-reaching implications to the national economy. In fact, a resolution of this issue will determine whether Filipinos are masters, or second class citizens, in their own country. What is at stake here is whether Filipinos or foreigners will have ***effective control*** of the national economy. Indeed, if ever there is a legal issue that has far-reaching implications to the entire nation, and to future generations of Filipinos, it is the threshold legal issue presented in this case. The Court first encountered the issue on the definition of the term "capital" in Section 11, Article XII of the Constitution in the case of *Fernandez v. Cojuangco,* docketed as G.R. No. 157360. That case involved the same public utility (PLDT) and substantially the same private respondents. Despite the importance and novelty of the constitutional issue raised therein and despite the fact that the petition involved a purely legal question, the Court declined to resolve the case on the merits, and instead denied the same for disregarding the hierarchy of courts. There, petitioner Fernandez assailed on a pure question of law the Regional Trial Court's Decision of 21 February 2003 *via* a petition for review under Rule 45. The Court's Resolution, denying the petition, became final on 21 December 2004. The instant petition therefore presents the Court with another opportunity to finally settle this **purely legal issue** which is of transcendental importance to the national economy and a fundamental requirement to a faithful adherence to our Constitution. The Court must forthwith seize such opportunity, not only for the benefit of the litigants, but more significantly for the benefit of the entire Filipino people, to ensure, in the words of the Constitution, "a self-reliant and independent national economy **effectively controlled** by Filipinos." Besides, in the light of vague and confusing positions taken by government agencies on this purely legal issue, present and future foreign investors in this country deserve, as a matter of basic fairness, a categorical ruling from this Court on the extent of their participation in the capital of public utilities and other nationalized businesses. Despite its far-reaching implications to the national economy,

this purely legal issue has remained unresolved for over 75 years since the 1935 Constitution. There is no reason for this Court to evade this ever recurring fundamental issue and delay again defining the term "capital," which appears not only in Section 11, Article XII of the Constitution, but also in Section 2, Article XII on co-production and joint venture agreements for the development of our natural resources, in Section 7, Article XII on ownership of private lands, in Section 10, Article XII on the reservation of certain investments to Filipino citizens, in Section 4(2), Article XIV on the ownership of educational institutions, and in Section 11(2), Article XVI on the ownership of advertising companies.

3. ID.; ID.; ID.; A CITIZEN HAS *LOCUS STANDI* TO BRING A SUIT ON MATTERS OF TRANSCENDENTAL IMPORTANCE TO THE PUBLIC. — There is no dispute that petitioner is a stockholder of PLDT. As such, he has the right to question the subject sale, which he claims to violate the nationality requirement prescribed in Section 11, Article XII of the Constitution. If the sale indeed violates the Constitution, then there is a possibility that PLDT's franchise could be revoked, a dire consequence directly affecting petitioner's interest as a stockholder. More importantly, there is no question that the instant petition raises matters of transcendental importance to the public. The fundamental and threshold legal issue in this case, involving the national economy and the economic welfare of the Filipino people, far outweighs any perceived impediment in the legal personality of the petitioner to bring this action. In *Chavez v. PCGG*, the Court upheld the right of a citizen to bring a suit on matters of transcendental importance to the public, thus: In *Tañada v. Tuvera*, the Court asserted that **when the issue concerns a public right and the object of *mandamus* is to obtain the enforcement of a public duty, the people are regarded as the real parties in interest; and because it is sufficient that petitioner is a citizen and as such is interested in the execution of the laws, he need not show that he has any legal or special interest in the result of the action**. In the aforesaid case, the petitioners sought to enforce their right to be informed on matters of public concern, a right then recognized in Section 6, Article IV of the 1973 Constitution, in connection with the rule that laws in order to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated. In ruling for

the petitioners' legal standing, the Court declared that the right they sought to be enforced 'is a public right recognized by no less than the fundamental law of the land.' *Legaspi v. Civil Service Commission*, while reiterating Tañada, further declared that '**when a *mandamus* proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that petitioner is a citizen and, therefore, part of the general 'public' which possesses the right**.' Further, in *Albano v. Reyes*, we said that while expenditure of public funds may not have been involved under the questioned contract for the development, management and operation of the Manila International Container Terminal, '**public interest [was] definitely involved considering the important role [of the subject contract] . . . in the economic development of the country and the magnitude of the financial consideration involved**.' We concluded that, as a consequence, the disclosure provision in the Constitution would constitute sufficient authority for upholding the petitioner's standing. Clearly, since the instant petition, brought by a citizen, involves matters of transcendental public importance, the petitioner has the requisite *locus standi*.

4. ID.; 1987 CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; FILIPINIZATION OF PUBLIC UTILITIES PROVISION; AN EXPRESS RECOGNITION OF THE SENSITIVE AND VITAL POSITION OF PUBLIC UTILITIES BOTH IN THE NATIONAL ECONOMY AND FOR NATIONAL SECURITY. — Father Joaquin G. Bernas, S.J., a leading member of the 1986 Constitutional Commission, reminds us that the Filipinization provision in the 1987 Constitution is one of the products of the spirit of nationalism which gripped the 1935 Constitutional Convention. The 1987 Constitution "provides for the Filipinization of public utilities by requiring that any form of authorization for the operation of public utilities should be granted only to 'citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens.' **The provision is [an express] recognition of the sensitive and vital position of public utilities both in the national economy and for national security."** The evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest. This specific provision

explicitly reserves to Filipino citizens control of public utilities, pursuant to an overriding economic goal of the 1987 Constitution: to "conserve and develop our patrimony" and ensure "a self-reliant and independent national economy ***effectively controlled*** by Filipinos." Any citizen or juridical entity desiring to operate a public utility must therefore meet the minimum nationality requirement prescribed in Section 11, Article XII of the Constitution. Hence, for a corporation to be granted authority to operate a public utility, at least 60 percent of its "capital" must be owned by Filipino citizens.

5. ID.; ID.; ID.; THE TERM "CAPITAL" IN SECTION 11, ARTICLE XII OF THE CONSTITUTION REFERS ONLY TO SHARES OF STOCK THAT CAN VOTE IN THE ELECTION OF DIRECTORS. — The term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock comprising both common and non-voting preferred shares. The Corporation Code of the Philippines classifies shares as common or preferred. x x x Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation. This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation. In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders. In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote. Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid. Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the

term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. **In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.** This interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities. As revealed in the deliberations of the Constitutional Commission, "capital" refers to the voting stock or **controlling interest** of a corporation.

6. ID.; ID.; ID.; MERE LEGAL TITLE IS INSUFFICIENT TO MEET THE 60 PERCENT FILIPINO OWNED "CAPITAL" REQUIRED IN THE CONSTITUTION. — Mere legal title is insufficient to meet the 60 percent Filipino-owned "capital" required in the Constitution. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is "considered as non-Philippine national[s]."

7. ID.; ID.; ID.; A BROAD DEFINITION OF THE TERM "CAPITAL" AS THE TOTAL OUTSTANDING CAPITAL STOCK, UNJUSTIFIABLY DISREGARDS WHO OWNS THE ALL-IMPORTANT VOTING STOCK WHICH NECESSARILY EQUATES TO CONTROL OF THE PUBLIC UTILITY; A BROAD DEFINITION WILL ALSO RENDER ILLUSORY THE STATE POLICY OF AN INDEPENDENT NATIONAL ECONOMY EFFECTIVELY CONTROLLED BY FILIPINOS. — To construe broadly the term "capital" as the total outstanding capital stock, including both common and *non-voting* preferred shares, grossly contravenes the intent and letter of the Constitution that the "State shall develop a self-reliant and independent national economy ***effectively controlled*** by Filipinos." A broad definition unjustifiably disregards who owns the all-important voting stock, which necessarily equates to control of the public utility. We shall illustrate the glaring anomaly in giving a broad definition to the term "capital." Let us assume that a corporation has 100 common shares owned by foreigners and 1,000,000

non-voting preferred shares owned by Filipinos, with both classes of share having a par value of one peso (₱1.00) per share. Under the broad definition of the term "capital," such corporation would be considered compliant with the 40 percent constitutional limit on foreign equity of public utilities since the overwhelming majority, or more than 99.999 percent, of the total outstanding capital stock is Filipino owned. This is obviously absurd. In the example given, only the foreigners holding the common shares have voting rights in the election of directors, even if they hold only 100 shares. The foreigners, with a minuscule equity of less than 0.001 percent, exercise control over the public utility. On the other hand, the Filipinos, holding more than 99.999 percent of the equity, cannot vote in the election of directors and hence, have no control over the public utility. This starkly circumvents the intent of the framers of the Constitution, as well as the clear language of the Constitution, to place the control of public utilities in the hands of Filipinos. It also renders illusory the State policy of an independent national economy ***effectively controlled*** by Filipinos. The example given is not theoretical but can be found in the real world, ***and in fact exists in the present case***.

8. ID.; ID.; ID.; ONLY HOLDERS OF COMMON SHARES CAN VOTE IN THE ELECTION OF DIRECTORS, MEANING ONLY COMMON SHAREHOLDERS EXERCISE CONTROL OVER RESPONDENT PHILIPPINE LONG DISTANCE TELEPHONE COMPANY (PLDT). — Holders of PLDT preferred shares are explicitly denied of the right to vote in the election of directors. PLDT's Articles of Incorporation expressly state that "**the holders of Serial Preferred Stock shall not be entitled to vote at any meeting of the stockholders for the election of directors or for any other purpose** or otherwise participate in any action taken by the corporation or its stockholders, or to receive notice of any meeting of stockholders." On the other hand, holders of common shares are granted the exclusive right to vote in the election of directors. PLDT's Articles of Incorporation state that "each holder of Common Capital Stock shall have one vote in respect of each share of such stock held by him on all matters voted upon by the stockholders, and **the holders of Common Capital Stock shall have the exclusive right to vote for the election of directors and for all other purposes.**" In short, only holders

of common shares can vote in the election of directors, meaning only common shareholders exercise control over PLDT. Conversely, holders of preferred shares, who have no voting rights in the election of directors, do not have any control over PLDT. In fact, under PLDT's Articles of Incorporation, holders of common shares have voting rights for all purposes, while holders of preferred shares have no voting right for any purpose whatsoever. It must be stressed, and **respondents do not dispute**, that foreigners hold a majority of the common shares of PLDT. In fact, based on PLDT's 2010 General Information Sheet (GIS), which is a document required to be submitted annually to the Securities and Exchange Commission, foreigners hold 120,046,690 common shares of PLDT whereas Filipinos hold only 66,750,622 common shares. In other words, foreigners hold 64.27% of the total number of PLDT's common shares, while Filipinos hold only 35.73%. Since holding a majority of the common shares equates to control, it is clear that foreigners exercise control over PLDT. Such amount of control unmistakably exceeds the allowable 40 percent limit on foreign ownership of public utilities expressly mandated in Section 11, Article XII of the Constitution.

9. ID.; ID.; ID.; THE 2010 GENERAL INFORMATION SHEET UNDENIABLY SHOWS THAT BENEFICIAL INTEREST IN PLDT IS NOT WITH THE NON-VOTING PREFERRED SHARES BUT WITH THE COMMON SHARES, BLATANTLY VIOLATING THE CONSTITUTIONAL REQUIREMENT OF 60 PERCENT FILIPINO CONTROL AND BENEFICIAL OWNERSHIP IN A PUBLIC UTILITY. — The Dividend Declarations of PLDT for 2009, as submitted to the SEC, shows that per share the SIP preferred shares earn a pittance in dividends compared to the common shares. PLDT declared dividends for the common shares at ₱70.00 per share, while the declared dividends for the preferred shares amounted to a measly ₱1.00 per share. So the preferred shares not only cannot vote in the election of directors, they also have very little and obviously negligible dividend earning capacity compared to common shares. As shown in PLDT's 2010 GIS, as submitted to the SEC, the par value of PLDT common shares is ₱5.00 per share, whereas the par value of preferred shares is ₱10.00 per share. In other words, preferred shares have twice the par value of common shares but cannot elect directors and have only 1/70 of the dividends of common

shares. Moreover, 99.44% of the preferred shares are owned by Filipinos while foreigners own only a minuscule 0.56% of the preferred shares. Worse, preferred shares constitute 77.85% of the authorized capital stock of PLDT while common shares constitute only 22.15%. This undeniably shows that beneficial interest in PLDT is not with the non-voting preferred shares but with the common shares, blatantly violating the constitutional requirement of 60 percent Filipino control and Filipino beneficial ownership in a public utility.

10. ID.; ID.; ID.; FILIPINOS HOLD LESS THAN 60 PERCENT OF THE VOTING STOCK, AND EARN LESS THAN 60 PERCENT OF THE DIVIDENDS OF PLDT DIRECTLY CONTRAVENING THE CONSTITUTIONAL MANDATE THAT THE LEGAL AND BENEFICIAL OWNERSHIP OF 60 PERCENT OF THE OUTSTANDING CAPITAL STOCK MUST REST IN THE HANDS OF FILIPINOS. — The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipinos in accordance with the constitutional mandate. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is constitutionally required for the State's grant of authority to operate a public utility. The undisputed fact that the PLDT preferred shares, 99.44% owned by Filipinos, are non-voting and earn only 1/70 of the dividends that PLDT common shares earn, grossly violates the constitutional requirement of 60 percent Filipino control and Filipino beneficial ownership of a public utility. **In short, Filipinos hold less than 60 percent of the voting stock, and earn less than 60 percent of the dividends, of PLDT.** This directly contravenes the express command in Section 11, Article XII of the Constitution that "[n]o franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to x x x corporations x x x organized under the laws of the Philippines, **at least sixty per centum of whose capital is owned by such citizens x x x.**" To repeat, (1) foreigners own 64.27% of the common shares of PLDT, which class of shares exercises the **sole** right to vote in the election of directors, and thus exercise control over PLDT; (2) Filipinos own only 35.73% of PLDT's common shares, constituting a minority of the voting stock, and thus do not exercise control over PLDT; (3) preferred shares, 99.44% owned by Filipinos, have no voting rights; (4) preferred shares earn

only 1/70 of the dividends that common shares earn; (5) preferred shares have twice the par value of common shares; and (6) preferred shares constitute 77.85% of the authorized capital stock of PLDT and common shares only 22.15%. This kind of ownership and control of a public utility is a mockery of the Constitution.

11. ID.; ID.; ID.; CONSTRUING THE TERM "CAPITAL" IN SECTION 11, ARTICLE XII OF THE CONSTITUTION TO INCLUDE BOTH VOTING AND NON-VOTING SHARES WILL RESULT IN THE ABJECT SURRENDER OF OUR TELECOMMUNICATIONS INDUSTRY TO FOREIGNERS AMOUNTING TO A CLEAR ABDICATION OF THE STATE'S CONSTITUTIONAL DUTY TO LIMIT CONTROL OF PUBLIC UTILITIES TO FILIPINO CITIZENS. — Indisputably, construing the term "capital" in Section 11, Article XII of the Constitution to include both voting and non-voting shares will result in the abject surrender of our telecommunications industry to foreigners, amounting to a clear abdication of the State's constitutional duty to limit control of public utilities to Filipino citizens. Such an interpretation certainly runs counter to the constitutional provision reserving certain areas of investment to Filipino citizens, such as the exploitation of natural resources as well as the ownership of land, educational institutions and advertising businesses. The Court should never open to foreign control what the Constitution has expressly reserved to Filipinos for that would be a betrayal of the Constitution and of the national interest. The Court must perform its solemn duty to defend and uphold the intent and letter of the Constitution to ensure, in the words of the Constitution, "a self-reliant and independent national economy *effectively controlled* by Filipinos."

12. ID.; ID.; ID.; SECTION 11, ARTICLE XII OF THE CONSTITUTION IS SELF EXECUTING AND THERE IS NO NEED FOR LEGISLATION TO IMPLEMENT IT. — Section 11, Article XII of the Constitution, like other provisions of the Constitution expressly reserving to Filipinos *specific* areas of investment, such as the development of natural resources and ownership of land, educational institutions and advertising business, is ***self-executing***. There is no need for legislation to implement these self-executing provisions of the Constitution.

x x x To treat Section 11, Article XII of the Constitution as not self-executing would mean that since the 1935 Constitution, or over the last 75 years, not one of the constitutional provisions expressly reserving specific areas of investments to corporations, at least 60 percent of the "capital" of which is owned by Filipinos, was enforceable. In short, the framers of the 1935, 1973 and 1987 Constitutions miserably failed to effectively reserve to Filipinos specific areas of investment, like the operation by corporations of public utilities, the exploitation by corporations of mineral resources, the ownership by corporations of real estate, and the ownership of educational institutions. All the legislatures that convened since 1935 also miserably failed to enact legislations to implement these vital constitutional provisions that determine who will effectively control the national economy, Filipinos or foreigners. This Court cannot allow such an absurd interpretation of the Constitution.

13. MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); CAN BE COMPELLED BY *MANDAMUS* TO PERFORM ITS STATUTORY DUTY WHEN IT UNLAWFULLY NEGLECTS TO PERFORM THE SAME. — This Court has held that the SEC "has both regulatory and adjudicative functions." Under its regulatory functions, the SEC can be compelled by *mandamus* to perform its statutory duty when it unlawfully neglects to perform the same. Under its adjudicative or quasi-judicial functions, the SEC can be also be compelled by *mandamus* to hear and decide a possible violation of any law it administers or enforces when it is mandated by law to investigate such violation.

14. ID.; ID.; THE SEC HAS THE POWER UNDER THE CORPORATION CODE TO REJECT OR DISAPPROVE THE ARTICLES OF INCORPORATION OF ANY CORPORATION WHERE THE REQUIRED PERCENTAGE OF OWNERSHIP OF THE CAPITAL STOCK TO BE OWNED BY CITIZENS OF THE PHILIPPINES HAS NOT BEEN COMPLIED WITH AS REQUIRED BY EXISTING LAWS OR THE CONSTITUTION. — Under Section 17(4) of the Corporation Code, the SEC has the regulatory function to reject or disapprove the Articles of Incorporation of any corporation where **"the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or**

the Constitution." Thus, the SEC is the government agency tasked with the statutory duty to enforce the nationality requirement prescribed in Section 11, Article XII of the Constitution on the ownership of public utilities. This Court, in a petition for declaratory relief that is treated as a petition for *mandamus* as in the present case, can direct the SEC to perform its statutory duty under the law, a duty that the SEC has apparently unlawfully neglected to do based on the 2010 GIS that respondent PLDT submitted to the SEC.

VELASCO, JR., *J., separate dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; NOT PROPER IN CASE AT BAR. — It is patently clear that petitions for declaratory relief, annulment of sale and injunction do not fall within the exclusive original jurisdiction of this Court. *First*, the court with the proper jurisdiction for declaratory relief is the Regional Trial Court (RTC). Sec. 1, Rule 63 of the Rules of Court stresses that an action for declaratory relief is within the **exclusive** original jurisdiction of the RTC, *viz*: Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, **bring an action in the appropriate Regional Trial Court** to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. An action for declaratory relief also requires the following: (1) a justiciable controversy between persons whose interests are adverse; (2) the party seeking the relief has a legal interest in the controversy; and (3) the issue is ripe for judicial determination. As previously discussed, petitioner lacks any real interest in this action; thus, no justiciable controversy between adverse interests exists. Further, the Rules of Court also requires that "[a]ll persons who have or claim any interest which would be affected by the declaration shall be made parties." The failure to implead all persons with a claim or interest in the subject matter of the petition for declaratory relief is a jurisdictional defect. What is more, an action for declaratory relief requires that it be filed before "the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior

to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action." Here, petitioner himself points out the fact that, using the common stockholding basis, the 40% maximum foreign ownership limit on PLDT was already violated long before the sale of the PTIC shares by the government. In addition, the sale itself has already been consummated. This only means that an action for declaratory relief is no longer proper.

2. ID.; ID.; *MANDAMUS*; PETITION IS PREMATURE IF THERE ARE ADMINISTRATIVE REMEDIES AVAILABLE TO PETITIONER. — A petition for *mandamus* is premature if there are administrative remedies available to petitioner. Under the doctrine of primary administrative jurisdiction, "courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact. x x x Along with this, the doctrine of exhaustion of administrative remedies also requires that where an administrative remedy is provided by statute relief must be sought by exhausting this remedy before the courts will act. In the instant case, the power and authority to determine compliance with the Constitution lies with the SEC. Under Section 17(4) of the Corporation Code, the SEC has the power to approve or reject the Articles of Incorporation of any corporation where "the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution." Similarly, under Section 5 of the Securities Regulation Code, the SEC is conferred with the power to suspend or revoke the franchise or certificate of registration of corporations upon any of the grounds provided by law. It bears stressing that the SEC also has the power to investigate violations of the Securities Regulation Code and its Amended Rules. With this, it is clear that petitioner failed to invoke the primary jurisdiction of the SEC with respect to this matter. Additionally, the petition contains numerous questions of fact which is not allowed in a petition for *mandamus*. Hence, based on the foregoing, a petition for *mandamus* is evidently improper. *Second*, since an action for annulment of sale is an ordinary civil action incapable of pecuniary estimation, it also falls within the exclusive original jurisdiction of the RTC.

3. ID.; CIVIL PROCEDURE; JOINDER OF CAUSES OF ACTION; SPECIFICALLY PROHIBITS THE JOINING OF SPECIAL CIVIL ACTIONS WITH ORDINARY CIVIL ACTIONS; VIOLATED IN CASE AT BAR. — It should be noted that the non-joinder of ordinary civil actions with special civil actions is elementary in remedial law. Sec. 5, Rule 2 of the Rules specifically prohibits the joining of special civil actions or actions governed by special rules with ordinary civil actions. In this case, petitioner violated this basic rule when he joined several special civil actions, prohibition and declaratory relief, and the ordinary civil actions for annulment and injunction.

4. POLITICAL LAW; JUDICIARY DEPARTMENT; JUDICIAL REVIEW; PETITIONER HAS NO LEGAL STANDING TO QUESTION THE SALE OF THE PHILIPPINE TELECOMMUNICATIONS INVESTMENT CORPORATION (PTIC) SHARES OF THE GOVERNMENT TO RESPONDENT FIRST PACIFIC CO., LTD. — Despite this, the *ponencia* decided to treat the petition for declaratory relief as one for *mandamus*, citing the rule that "where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for *mandamus*." However, such rule is not absolute. In *Macasiano v. National Housing Authority*, the Court explicitly stated that the exercise of such discretion, whether to treat a petition for declaratory relief as one for *mandamus*, **presupposes that the petition is otherwise viable or meritorious**. As I shall discuss subsequently in the substantive portion of this opinion, the petition in this case is clearly not viable or meritorious. Moreover, one of the reasons pointed out by the Court in *Macasiano* when it refused to treat the petition for declaratory relief as one for *mandamus* was that the petitioner lacked the proper standing to file the petition. Thus, the petition was subsequently dismissed. This is exactly similar to the instant case. As previously explained, petitioner has no legal standing to bring the present petition before this Court. He failed to show any real interest in the case substantial enough to give him the required legal standing to question the sale of the PTIC shares of the government to First Pacific.

5. ID.; ID.; THE DOCTRINE OF HIERARCHY OF COURTS DICTATES THAT WHEN JURISDICTION IS SHARED CONCURRENTLY WITH DIFFERENT COURTS, THE PROPER SUIT SHOULD BE FIRST FILED WITH THE

LOWER RANKING COURT AND FAILURE TO DO SO IS SUFFICIENT CAUSE FOR DISMISSAL OF PETITION. — Although this Court, the CA, and the RTC have "concurrent jurisdiction to issue writs of *certiorari*, **prohibition**, *mandamus*, *quo warranto, habeas corpus* and **injunction**, such concurrence does not give the petitioner unrestricted freedom of choice of court forum." The doctrine of hierarchy of courts dictates that when jurisdiction is shared concurrently with different courts, the proper suit should first be filed with the lower-ranking court. Failure to do so is sufficient cause for the dismissal of a petition. x x x In the instant case, petitioner should have filed the petition for injunction and prohibition with the trial courts. Petitioner failed to show any exceptional or compelling circumstance to justify the exception to the rule of hierarchy of courts. Thus, absent such justification, the rule must be upheld.

6. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; PETITIONER FAILED TO IMPLEAD ALL INDISPENSABLE PARTIES; WITHOUT THE INDISPENSABLE PARTIES, THE COURT IS WANTING IN AUTHORITY TO ACT OR RULE ON THE PRESENT PETITION. — Procedural due process requires that before any of the common shares in excess of the 40% maximum foreign ownership limit can be taken, all the shareholders have to be given notice and a trial should be held before their shares are taken. This means that petitioner should have impleaded all the foreign natural and juridical shareholders of PLDT so that they can be heard. The foreign shareholders are considered as an "indispensable party" or one who: has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest[;] a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward. At the same time, the Rules

of Court explicitly requires the joinder of indispensable parties or "[p]arties in interest without whom no final determination can be had." This is mandatory. As held in *Pepsico, Inc. v. Emerald Pizza, Inc.*, their absence renders all actions of the court null and void x x x.

7. ID.; ID.; ID.; ID.; SINCE THE PRESENT PETITION PARTAKES OF A COLLATERAL ATTACK ON PHILIPPINE LONG DISTANCE TELEPHONE (PLDT) COMPANY'S FRANCHISE, DUE PROCESS REQUIRES THAT A PETITION FOR *QUO WARRANTO* BE FILED ATTACKING THE FRANCHISE ITSELF. — The present petition partakes of a collateral attack on PLDT's franchise as a public utility with petitioner pleading as ground PLDT's alleged breach of the 40% limit on foreign equity. Such is not allowed. As discussed in *PLDT v. National Telecommunications Commission*, a franchise is a property right that can only be questioned in a direct proceeding: x x x A franchise is a property right and cannot be revoked or forfeited without due process of law. The determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of *quo warranto*, the right to assert which, as a rule, belongs to the State "upon complaint or otherwise" x x x the reason being that the abuse of a franchise is a public wrong and not a private injury. A forfeiture of a franchise will have to be declared in a direct proceeding for the purpose brought by the State because a franchise is granted by law and its unlawful exercise is primarily a concern of Government. Hence, due process requires that for the revocation of franchise a petition for *quo warranto* be filed directly attacking the franchise itself. Evidently, the petition is patently flawed and the petitioner availed himself of the wrong remedies. These jurisdictional and procedural grounds, by themselves, are ample enough to warrant the dismissal of the petition. Granting *arguendo* that the petition is sufficient in substance and form, it will still suffer the same fate.

8. ID.; ID.; 1987 CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; FILIPINIZATION OF PUBLIC UTILITIES PROVISION; THE INTENT OF THE FRAMERS OF THE CONSTITUTION WAS NOT TO LIMIT THE APPLICATION OF THE WORD "CAPITAL"

TO VOTING SHARES OR COMMON SHARES; BY USING THE WORD "CAPITAL," THE FRAMERS OF THE CONSTITUTION ADOPTED THE DEFINITON OR INTERPRETATION THAT INCLUDES ALL TYPES OF SHARES, WHETHER VOTING OR NON-VOTING. — Contrary to pronouncement of the *ponencia*, the intent of the framers of the Constitution was not to limit the application of the word "capital" to voting or common shares alone. In fact, the Records of the Constitutional Commission reveal that even though the UP Law Center proposed the phrase "voting stock or controlling interest," the framers of the Constitution did not adopt this but instead used the word "capital." x x x Undoubtedly, the framers of the Constitution decided to use the word "capital" in all provisions that talk about foreign participation and **intentionally** left out the phrase "voting stocks" or "controlling interest." *Cassus Omissus Pro Omisso Habendus Est* — a person, object or thing omitted must have been omitted intentionally. In this case, the intention of the framers of the Constitution is very clear — to omit the phrases "voting stock" and "controlling interest." Evidently, the framers of the Constitution were more comfortable with going back to the wording of the 1935 and 1973 Constitutions, which is to use the 60-40 percentage for the basis of the capital stock of the corporation. Additionally, the phrases "voting stock or controlling interest" were also initially used in Secs. 2 and 10, Article XII of the 1987 Constitution. These provisions involve the development of natural resources and certain investments. However, after much debate, they were also replaced with the word "capital" alone. All of these were very evident in the aforementioned deliberations. Much more significant is the fact that a comprehensive examination of the constitutional deliberations in their entirety will reveal that the framers of the Constitution themselves understood that the word capital includes both voting and non-voting shares and still decided to use "capital" alone. To emphasize, by using the word "capital," the framers of the Constitution adopted the definition or interpretation that includes **all** types of shares, whether voting or non-voting.

9. ID.; ID.; ID.; ID.; ID.; THE *PONENCIA* FAILED TO SEE THE FACT THAT THE FOREIGN INVESTMENTS ACT (FIA) SPECIFICALLY HAS THE PHRASE "ENTITLED TO VOTE" AFTER THE PHRASE "TOTAL OUTSTANDING

CAPITAL STOCK" WHICH CONNOTES THE INCLUSION OF ALL TYPES OF SHARES UNDER THE TERM "CAPITAL" AND NOT JUST THOSE THAT ARE ENTITLED TO VOTE. — The *ponencia* failed to see the fact that the FIA specifically has the phrase "entitled to vote" after the phrase "total outstanding capital stock." Logically, this means that interpreting the phrase "total outstanding capital stock" **alone** connotes the inclusion of all types of shares under the term "capital" and not just those that are entitled to vote. By adding the phrase "entitled to vote," the FIA sought to distinguish between the shares that can vote and those that cannot. Thus, it is very clear that even the FIA itself supports the definition of the term "capital" as including all types of shares. As a matter of fact, in the Senate deliberations of the FIA, Senator Angara pointed out that the word "capital," as used in the 1987 Constitution, includes all types of shares.

10. ID.; ID.; ID.; ID.; ID.; THE PHRASE "ENTITLED TO VOTE" SHOULD NOT BE INTERPRETED TO BE LIMITED TO COMMON SHARES ALONE OR THOSE SHARES ENTITLED TO VOTE IN THE ELECTION OF MEMBERS OF THE BOARD OF DIRECTORS; THE FOREIGN INVESTMENTS ACT SHOULD BE READ IN HARMONY WITH THE CONSTITUTION WHICH PROVIDES FOR A SINGLE REQUIREMENT FOR THE OPERATION OF A PUBLIC UTILITY THAT 60% OF THE CAPITAL MUST BE FILIPINO OWNED AND A MERE STATUTE CANNOT ADD ANOTHER REQUIREMENT. — It is a well-settled rule of statutory construction that a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution. Where a statute is reasonably susceptible of two constructions, one constitutional and the other unconstitutional, the construction in favor of its constitutionality should be adopted. In this case, the FIA should be read in harmony with the Constitution. Since the Constitution only provides for a single requirement for the operation of a public utility under Sec. 11, *i.e.*, 60% capital must be Filipino-owned, a mere statute cannot add another requirement. Otherwise, such statute may be considered unconstitutional. Accordingly, the phrase "entitled to vote" should not be interpreted to be limited to common shares alone or those shares entitled to vote in the election of members of the Board of Directors. It should also include those deemed non-voting because they also

have voting rights. Sec. 6 of the Corporation Code grants voting rights to holders of shares of a corporation on certain key fundamental corporate matters despite being classified as non-voting in the articles of incorporation. These are: 1. Amendment of the articles of incorporation; 2. Adoption and amendment of by-laws; 3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property; 4. Incurring, creating or increasing bonded indebtedness; 5. Increase or decrease of capital stock; 6. Merger or consolidation of the corporation with another corporation or other corporations; 7. Investment of corporate funds in another corporation or business in accordance with this Code; and 8. Dissolution of the corporation. Clearly, the shares classified as non-voting are also entitled to vote under these circumstances. In fact, the FIA did not say "entitled to vote in the management affairs of the corporation" or "entitled to vote in the election of the members of the Board of Directors." Verily, where the law does not distinguish, neither should We. Hence, the proper interpretation of the phrase "entitled to vote" under the FIA should be that it applies to all shares, whether classified as voting or non-voting shares. Such construction is in fact in harmony with the fundamental law of the land. Stockholders, whether holding voting or non-voting stocks, have all the rights, powers and privileges of ownership over their stocks. This necessarily includes the right to vote because such is inherent in and incidental to the ownership of corporate stocks, and as such is a property right.

11. ID.; ID.; ID.; ID.; IN APPLYING THE CONTROL TEST, THE SECURITIES AND EXCHANGE COMMISSION (SEC) HAS CONSISTENTLY RULED THAT DETERMINATION OF THE NATIONALITY OF THE CORPORATION MUST BE BASED ON THE ENTIRE CAPITAL STOCK, WHICH INCLUDES BOTH VOTING AND NON-VOTING SHARES. — Control is another inherent right of ownership. The circumstances enumerated in Sec. 6 of the Corporation Code clearly evince this. It gives voting rights to the stocks deemed as non-voting as to ***fundamental* and *major* corporate changes**. Thus, the issue should not only dwell on the daily management affairs of the corporation but also on the equally important fundamental changes that may need to be voted on. On this, the "non-voting" shares also exercise control, together with the voting shares. Consequently, the fact that only holders

of common shares can elect a corporation's board of directors does not mean that only such holders exercise control over the corporation. Particularly, the control exercised by the board of directors over the corporation, by virtue of the corporate entity doctrine, is totally distinct from the corporation's stockholders and any power stockholders have over the corporation as owners. It is settled that when the activity or business of a corporation falls within any of the partly nationalized provisions of the Constitution or a special law, the "control test" must also be applied to determine the nationality of a corporation on the basis of the nationality of the stockholders who control its equity. The control test was laid down by the Department of Justice (DOJ) in its Opinion No. 18 dated January 19, 1989. It determines the nationality of a corporation with alien equity based on the percentage of capital owned by Filipino citizens. It reads: Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as Philippine nationality, but if the percentage of Filipino ownership in the corporation or partnership is less than 60% only the number of shares corresponding to such percentage shall be counted as of Philippine nationality. In a catena of opinions, the SEC, "the government agency tasked with the statutory duty to enforce the nationality requirement prescribed in Section 11, Article XII of the Constitution on the ownership of public utilities," has consistently applied the control test. The FIA likewise adheres to the control test. This intent is evident in the May 21, 1991 deliberations of the Bicameral Conference Committee (Committees on Economic Affairs of the Senate and House of Representatives). x x x This intent is even more apparent in the Implementing Rules and Regulations (IRR) of the FIA. In defining a "Philippine national," **Section 1(b) of the IRR of the FIA categorically states that for the purposes of determining the nationality of a corporation the control test should be applied**. The cardinal rule in the interpretation of laws is to ascertain and give effect to the intention of the legislator. Therefore, the legislative intent to apply the control test in the determination of nationality must be given effect. Significantly, **in applying the control test, the SEC has consistently ruled that the determination of the nationality of the corporation must be based on the *entire***

***outstanding capital stock*, which includes both voting and non-voting shares.**

12. ID.; ID.; ID.; ID.; ID.; THE SEC'S DEFINITION OF THE WORD "CAPITAL" HAS BEEN CONSISTENTLY APPLIED TO INCLUDE THE ENTIRE OUTSTANDING CAPITAL STOCK OF A CORPORATION, IRREGARDLESS OF WHETHER IT IS COMMON OR PREFERRED OR VOTING OR NON-VOTING. — Without a doubt, the SEC's definition of the word "capital" has been consistently applied to include the entire outstanding capital stock of a corporation, irregardless of whether it is common or preferred or voting or non-voting. This contemporaneous construction of the SEC is entitled to great respect and weight especially since it is consistent with the Constitutional Commission's intention to use the term "capital" as applying to all shares, whether common or preferred. It is well to reiterate the principle of contemporaneous construction and the reason why it is entitled to great respect, *viz*: x x x As far back as In re Allen, (2 Phil. 630) a 1903 decision, Justice McDonough, as *ponente*, cited this excerpt from the leading American case of Pennoyer v. McConnaughy, decided in 1891: **The principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty it is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts,** is so firmly embedded in our jurisprudence that no authorities need be cited to support it.

13. ID.; ID.; ID.; ID.; ID.; IN NO INSTANCE CAN FOREIGNERS OBTAIN MAJORITY SEATS IN THE BOARD OF DIRECTORS; THE RIGHT OF FOREIGN INVESTORS TO ELECT THE MEMBERS OF THE BOARD OF DIRECTORS CANNOT EXCEED THE VOTING RIGHTS OF 40% OF THE COMMON SHARES, EVEN THOUGH THEIR OWNERSHIP OF COMMON SHARES EXCEED 40%.— First of all, it has been established that the word "capital" in the phrase "corporation or associations organized under the laws of the Philippines, at least sixty per centum of whose 'capital' is owned by such citizens" under Sec. 11, Art. XII of the 1987 Constitution means both common or preferred shares or voting or non-voting shares. This phrase is **qualified** by the last sentence of Sec. 11, which reads: x x x **The**

participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. The aforequoted constitutional provision is unequivocal — it limits the **participation** of the foreign investors in the governing body to their proportionate share in the capital of the corporation. Participation is "the act of taking part in something." Accordingly, it includes the right to elect or vote for in the election of the members of the Board of Directors. However, this right to participate in the election is restricted by the first sentence of Sec. 11 such that their right cannot exceed their proportionate share in the capital, *i.e.*, 40%. In other words, the right of foreign investors to elect the members of the Board of Directors cannot exceed the voting rights of the 40% of the common shares, even though their ownership of common shares may exceed 40%. Thus, since they can only vote up to 40% of the common shares of the corporation, they will never be in a position to elect majority of the members of the Board of Directors. Consequently, control over the membership of the Board of Directors will always be in the hands of Filipino stockholders although they actually own less than 50% of the common shares. Let Us apply the foregoing principles to the situation of PLDT. Granting without admitting that foreigners own 64.27% of PLDT's common shares and say they own 40% of the total number of common and preferred shares, still they can only vote up to 40% of the common shares of PLDT since their participation in the election of the Board of Directors (the governing body of the corporation) is limited by the 40% ownership of the capital under the first sentence of Sec. 11, Art. XII of the Constitution. The foreigners can only elect members of the Board of Directors based on their 40% ownership of the common shares and their directors will only constitute the minority. In no instance can the foreigners obtain the majority seats in the Board of Directors.

14. ID.; ID.; ID.; ID.; ID.; THE MAJORITY CONTROL OF THE FILIPINOS OVER PLDT IS, AT ALL TIMES, ASSURED, BY THE FACT THAT THE PROPORTIONATE SHARE OF THE FOREIGNERS IN THE CAPITAL IS EVEN LESS THAN 40%. — The 2010 General Information Sheet (GIS) of PLDT reveals that among the thirteen (13) members of the Board of Directors, only two (2) are foreigners.

It also reveals that the foreign investors only own 13.71% of the capital of PLDT. Obviously, the nomination and election committee of PLDT uses the 40% cap on the foreign ownership of the capital which explains why the foreigners only have two (2) members in the Board of Directors. It is apparent that the 64.27% ownership by foreigners of the common shares cannot be used to elect the majority of the Board of Directors. The fact that the proportionate share of the foreigners in the capital (voting and non-voting shares or common and preferred shares) is even less than 40%, then they are only entitled to voting rights equivalent to the said proportionate share in the capital and in the process elect only a smaller number of directors. This is the reality in the instant case. Hence, the majority control of Filipinos over the management of PLDT is, at all times, assured.

15. ID.; ID.; ID.; ID.; ID.; APPLYING THE *PONENCIA'*S DEFINITION OF THE WORD "CAPITAL" WILL GIVE RISE TO A GREATER ANOMALY BECAUSE IT WILL RESULT IN THE FOREIGNER'S OBTAINING BENEFICIAL OWNERSHIP OF THE CORPORATION, WHICH IS CONTRARY TO THE PROVISIONS OF THE CONSTITUTION; WHEREAS INTERPRETING "CAPITAL" TO INCLUDE BOTH VOTING AND NON-VOTING SHARES WILL RESULT IN GIVING BOTH LEGAL AND BENEFICIAL OWNERSHIP OF THE CORPORATION TO FILIPINOS. — Applying the *ponencia*'s definition of the word "capital" will give rise to a greater anomaly because it will result in the foreigner's obtaining beneficial ownership over the corporation, which is contrary to the provisions of the Constitution; whereas interpreting "capital" to include both voting and non-voting shares will result in giving both legal and beneficial ownership of the corporation to the Filipinos. In the event that the word "capital" is construed as limited to common or voting shares only, it should not have any retroactive effect. Reliance in good faith on the opinions issued by the SEC, the regulating body charged with the duty to enforce the nationality required by the Constitution, should not prejudice any one, especially not the foreign investors. Giving such interpretation retroactive effect is tantamount to violation of due process and would impact negatively on the various foreign investments already present in the country. Accordingly, such construction should only be applied

prospectively. In sum, the Constitution requires that 60% of the capital be owned by Filipinos. It further requires that the foreign ownership of capital be limited to 40%, as well as its participation in the governing body of the public utility corporation be limited to its proportionate share in the capital which cannot exceed 40% thereof. As a result, control over the Board of Directors and full beneficial ownership of 60% of the capital stock of the corporation are secured in the hands of the Filipinos.

ABAD, *J., dissenting opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; ACTIONS FOR INJUNCTION, DECLARATORY RELIEF AND DECLARATION OF NULLITY OF SALE ARE NOT AMONG THE CASES THAT CAN BE INITIATED BEFORE THE SUPREME COURT; SAID ACTIONS BELONG TO OTHER TRIBUNALS. — Strictly speaking, Gamboa actions for injunction, declaratory relief, and declaration of nullity of sale are not among the cases that can be initiated before the Supreme Court. Those actions belong to some other tribunal. And, although the Court has original jurisdiction in prohibition cases, the Court shares this authority with the Court of Appeals and the Regional Trial Courts. But this concurrence of jurisdiction does not give the parties absolute and unrestrained freedom of choice on which court the remedy will be sought. They must observe the hierarchy of courts. As a rule, the Supreme Court will not entertain direct resort to it unless the remedy desired cannot be obtained in other tribunals. Only exceptional and compelling circumstances such as cases of national interest and of serious implications justify direct resort to the Supreme Court for the extraordinary remedy of writ of *certiorari*, prohibition, or *mandamus*. The majority of the Court of course suggests that although Gamboa entitles his actions as ones for injunction, declaratory relief, and declaration of nullity of sale, what controls the nature of such actions are the allegations of his petition. And a valid special civil action for *mandamus* can be made out of those allegations since respondent Secretary of Finance, his undersecretary, and respondent Chairman of the Securities and Exchange Commission are the officials who appear to have the duty in law to implement the foreign ownership restriction that the Constitution commands. To a

certain extent, I agree with the position that the majority of my colleagues takes on this procedural issue. I believe that a case can be made for giving due course to Gamboa's action. Indeed, there are in his actions compelling reasons to relax the doctrine of hierarchy of courts. The need to address the important question of defining the constitutional limit on foreign ownership of public utilities under Section 11, Article XII of the 1987 Constitution, a bedrock policy adopted by the Filipino people, is certainly a matter of serious national interest. Such policy is intended to develop a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs. Indeed, as the Court said in *Espina v. Zamora*, the provisions of Article XII of the 1987 Constitution lay down the ideals of economic nationalism. One of these is the Filipinization of public utilities under Section 11 which recognizes the very strategic position of public utilities both in the national economy and for national security. The participation of foreign capital is encouraged since the establishment and operation of public utilities may require the investment of substantial capital that Filipino citizens could possibly not afford. But at the same time, the Constitution wants to limit foreign involvement to prevent them from assuming control of public utilities which may be inimical to national interest.

2. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; NATIONAL ECONOMY AND PATRIMONY; FILIPINIZATION OF PUBLIC UTILITIES PROVISION; THE INTERPRETATION ADOPTED BY THE MAJORITY PLACES ON THE COURT THE AUTHORITY TO DEFINE AND INTERPRET THE MEANING OF "CAPITAL" WHICH AUTHORITY LIES WITH THE CONGRESS SINCE IT PARTAKES OF POLICY MAKING FOUNDED ON A GENERAL PRINCIPLE LAID DOWN BY THE FUNDAMENTAL LAW. — Gamboa contends that the constitutional limit on foreign ownership in public utilities should be based on the ownership of **common** or **voting shares** since it is through voting that stockholders are able to have control over a corporation. Preferred or non-voting shares should be excluded from the reckoning. But this interpretation, adopted by the majority, places on the Court the authority to define and interpret the meaning of "capital" in Section 11. I believe, however, that such authority should be for Congress to exercise since

it partakes of policy making founded on a general principle laid down by the fundamental law. The capital restriction written in the constitution lacks sufficient details for orderly and meaningful implementation. Indeed, in the twenty-four years that the provision has been in the Constitution, no concrete step has been taken by any government agency to see to its actual implementation given the absence of clear legislative guidance on how to go about it.

3. ID.; ID.; ID.; ID.; THE CONSTITUTION FAILED TO PROVIDE FOR THE MEANING OF THE TERM "CAPITAL," CONSIDERING THAT THE SHARES OF STOCK OF A CORPORATION VARY IN KINDS. — It has been said that a constitution is a system of fundamental laws for the governance and administration of a nation. It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which the government is founded. But while some constitutional provisions are self-executing, others are not. A constitutional provision is self-executing if it fixes the nature and extent of the right conferred and the liability imposed such that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action. On the other hand, if the provision needs a supplementary or enabling legislation, it is merely a declaration of policy and principle which is not self-executing. Here, the Constitution simply states that no franchise for the operation of a public utility shall be granted to a corporation organized under Philippine laws unless at least sixty per centum of its capital is owned by Filipino citizens. Evidently, the Constitution fails to provide for the meaning of the term "capital," considering that the shares of stock of a corporation vary in kinds. The usual classification depends on how profits are to be distributed and which stockholders have the right to vote the members of the corporation's board of directors.

4. ID.; ID.; ID.; ID.; THE COURT SHOULD NOT LEAVE THE MATTER OF COMPLIANCE WITH THE CONSTITUTIONAL LIMIT ON FOREIGN OWNERSHIP IN PUBLIC UTILITIES, A MATTER OF TRANSCENDENTAL IMPORTANCE, TO JUDICIAL LEGISLATION ESPECIALLY SINCE ANY RULING THE COURT MAKES

ON THE MATTER COULD HAVE DEEP ECONOMIC REPERCUSSIONS. — The Corporation Code does not offer much help, albeit it only confuses, since it uses the terms "capital," "capital stock," or "outstanding capital stock" interchangeably. "Capital" refers to the money, property, or means contributed by stockholders in the corporation and generally implies that the same have been contributed in payment for stock issued to the stockholders. "Capital stock" signifies the amount subscribed and paid-in in money, property or services. "Outstanding capital stock" means the total shares of stock issued to stockholders, whether or not fully or partially paid, except treasury shares. Meanwhile, the Foreign Investments Act of 1991 defines a "Philippine national" as, among others, a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines. This gives the impression, as Justice Carpio noted, that the term "capital" refers only to controlling interest or shares entitled to vote. On the other hand, government agencies such as the Securities and Exchange Commission, institutions, and corporations (such as the Philippine National Oil Company-Energy Development Corporation) interpret the term "capital" to include both preferred and common shares. Under this confusing legislative signals, the Court should not leave the matter of compliance with the constitutional limit on foreign ownership in public utilities, a matter of transcendental importance, to judicial legislation especially since any ruling the Court makes on the matter could have deep economic repercussions. This is not a concern over which the Court has competence. The 1987 Constitution laid down the general framework for restricting foreign ownership of public utilities. It is apt for Congress to build up on this framework by defining the meaning of "capital," establishing rules for the implementation of the State policy, providing sanctions for its violation, and vesting in the appropriate agency the responsibility for carrying out the purposes of such policy. Parenthetically, there have been several occasions in the past where Congress provided supplementary or enabling legislation for constitutional provisions that are not self-executing. To name just some: the Comprehensive Agrarian Reform Law of 1988, the Indigenous Peoples Rights Act of 1997, the Local Government Code of 1991, the Anti-Graft and Corrupt Practices

Act, the Speedy Trial Act of 1998, the Overseas Absentee Voting Act of 2003, the Party-List System Act, the Paternity Leave Act of 1996, and the Solo Parents' Welfare Act of 2000.

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D E C I S I O N

CARPIO, *J.*:

The Case

This is an original petition for prohibition, injunction, declaratory relief and declaration of nullity of the sale of shares of stock of Philippine Telecommunications Investment Corporation (PTIC) by the government of the Republic of the Philippines to Metro Pacific Assets Holdings, Inc. (MPAH), an affiliate of First Pacific Company Limited (First Pacific).

The Antecedents

The facts, according to petitioner Wilson P. Gamboa, a stockholder of Philippine Long Distance Telephone Company (PLDT), are as follows:[1]

On 28 November 1928, the Philippine Legislature enacted Act No. 3436 which granted PLDT a franchise and the right to engage in telecommunications business. In 1969, General Telephone and Electronics Corporation (GTE), an American company and a major PLDT stockholder, sold 26 percent of the outstanding common shares of PLDT to PTIC. In 1977,

[1] *Rollo* (Vol. I), pp. 15-103, (Vol. II), pp. 762-768.

Prime Holdings, Inc. (PHI) was incorporated by several persons, including Roland Gapud and Jose Campos, Jr. Subsequently, PHI became the owner of 111,415 shares of stock of PTIC by virtue of three Deeds of Assignment executed by PTIC stockholders Ramon Cojuangco and Luis Tirso Rivilla. In 1986, the 111,415 shares of stock of PTIC held by PHI were sequestered by the Presidential Commission on Good Government (PCGG). The 111,415 PTIC shares, which represent about 46.125 percent of the outstanding capital stock of PTIC, were later declared by this Court to be owned by the Republic of the Philippines.[2]

In 1999, First Pacific, a Bermuda-registered, Hong Kong-based investment firm, acquired the remaining 54 percent of the outstanding capital stock of PTIC. On 20 November 2006, the Inter-Agency Privatization Council (IPC) of the Philippine Government announced that it would sell the 111,415 PTIC shares, or 46.125 percent of the outstanding capital stock of PTIC, through a public bidding to be conducted on 4 December 2006. Subsequently, the public bidding was reset to 8 December 2006, and only two bidders, Parallax Venture Fund XXVII (Parallax) and Pan-Asia Presidio Capital, submitted their bids. Parallax won with a bid of ₱25.6 billion or US$510 million.

Thereafter, First Pacific announced that it would exercise its right of first refusal as a PTIC stockholder and buy the 111,415 PTIC shares by matching the bid price of Parallax. However, First Pacific failed to do so by the 1 February 2007 deadline set by IPC and instead, yielded its right to PTIC itself which was then given by IPC until 2 March 2007 to buy the PTIC shares. On 14 February 2007, First Pacific, through its subsidiary, MPAH, entered into a Conditional Sale and Purchase Agreement of the 111,415 PTIC shares, or 46.125 percent of the outstanding capital stock of PTIC, with the Philippine Government for the price of ₱25,217,556,000 or US$510,580,189. The sale was completed on 28 February 2007.

Since PTIC is a stockholder of PLDT, the sale by the Philippine Government of 46.125 percent of PTIC shares is actually an

[2] See *Cojuangco v. Sandiganbayan*, G.R. No. 183278, 24 April 2009, 586 SCRA 790.

indirect sale of 12 million shares or about 6.3 percent of the outstanding common shares of PLDT. **With the sale, First Pacific's common shareholdings in PLDT increased from 30.7 percent to 37 percent, thereby increasing the common shareholdings of foreigners in PLDT to about 81.47 percent.** This violates Section 11, Article XII of the 1987 Philippine Constitution which limits foreign ownership of the capital of a public utility to not more than 40 percent.[3]

On the other hand, public respondents Finance Secretary Margarito B. Teves, Undersecretary John P. Sevilla, and PCGG Commissioner Ricardo Abcede allege the following relevant facts:

On 9 November 1967, PTIC was incorporated and had since engaged in the business of investment holdings. PTIC held 26,034,263 PLDT common shares, or 13.847 percent of the total PLDT outstanding common shares. PHI, on the other hand, was incorporated in 1977, and became the owner of 111,415 PTIC shares or 46.125 percent of the outstanding capital stock of PTIC by virtue of three Deeds of Assignment executed by Ramon Cojuangco and Luis Tirso Rivilla. In 1986, the 111,415 PTIC shares held by PHI were sequestered by the PCGG, and subsequently declared by this Court as part of the ill-gotten wealth of former President Ferdinand Marcos. The sequestered

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[3] Section 11, Article XII of the 1987 Constitution provides:

ARTICLE XII
NATIONAL ECONOMY AND PATRIMONY

x x x x x x x x x

Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines.

PTIC shares were reconveyed to the Republic of the Philippines in accordance with this Court's decision[4] which became final and executory on 8 August 2006.

The Philippine Government decided to sell the 111,415 PTIC shares, which represent 6.4 percent of the outstanding common shares of stock of PLDT, and designated the Inter-Agency Privatization Council (IPC), composed of the Department of Finance and the PCGG, as the disposing entity. An invitation to bid was published in seven different newspapers from 13 to 24 November 2006. On 20 November 2006, a pre-bid conference was held, and the original deadline for bidding scheduled on 4 December 2006 was reset to 8 December 2006. The extension was published in nine different newspapers.

During the 8 December 2006 bidding, Parallax Capital Management LP emerged as the highest bidder with a bid of ₱25,217,556,000. The government notified First Pacific, the majority owner of PTIC shares, of the bidding results and gave First Pacific until 1 February 2007 to exercise its right of first refusal in accordance with PTIC's Articles of Incorporation. First Pacific announced its intention to match Parallax's bid.

On 31 January 2007, the House of Representatives (HR) Committee on Good Government conducted a public hearing on the particulars of the then impending sale of the 111,415 PTIC shares. Respondents Teves and Sevilla were among those who attended the public hearing. The HR Committee Report No. 2270 concluded that: (a) the auction of the government's 111,415 PTIC shares bore due diligence, transparency and conformity with existing legal procedures; and (b) **First Pacific's intended acquisition of the government's 111,415 PTIC shares resulting in First Pacific's 100% ownership of PTIC will not violate the 40 percent constitutional limit on foreign ownership of a public utility since PTIC holds only 13.847 percent of the total outstanding common shares of PLDT.**[5]

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[4] *Yuchengco v. Sandiganbayan*, G.R. No. 149802, 20 January 2006, 479 SCRA 1.

[5] *Rollo*, (Vol. II), p. 806.

On 28 February 2007, First Pacific completed the acquisition of the 111,415 shares of stock of PTIC.

Respondent Manuel V. Pangilinan admits the following facts: (a) the IPC conducted a public bidding for the sale of 111,415 PTIC shares or 46 percent of the outstanding capital stock of PTIC (the remaining 54 percent of PTIC shares was already owned by First Pacific and its affiliates); (b) Parallax offered the highest bid amounting to ₱25,217,556,000; (c) pursuant to the right of first refusal in favor of PTIC and its shareholders granted in PTIC's Articles of Incorporation, MPAH, a First Pacific affiliate, exercised its right of first refusal by matching the highest bid offered for PTIC shares on 13 February 2007; and (d) on 28 February 2007, the sale was consummated when MPAH paid IPC ₱25,217,556,000 and the government delivered the certificates for the 111,415 PTIC shares. Respondent Pangilinan denies the other allegations of facts of petitioner.

On 28 February 2007, petitioner filed the instant petition for prohibition, injunction, declaratory relief, and declaration of nullity of sale of the 111,415 PTIC shares. Petitioner claims, among others, that the sale of the 111,415 PTIC shares would result in an increase in First Pacific's common shareholdings in PLDT from 30.7 percent to 37 percent, and this, combined with Japanese NTT DoCoMo's common shareholdings in PLDT, would result to a total foreign common shareholdings in PLDT of 51.56 percent which is over the 40 percent constitutional limit.[6] Petitioner asserts:

> If and when the sale is completed, First Pacific's equity in PLDT will go up from 30.7 percent to 37.0 percent of its common — or voting — stockholdings, x x x. Hence, the consummation of the sale will put the two largest foreign investors in PLDT — First Pacific and Japan's NTT DoCoMo, which is the world's largest wireless telecommunications firm, owning 51.56 percent of PLDT common equity. x x x With the completion of the sale, data culled from the official website of the New York Stock Exchange (www.nyse.com) showed that those foreign entities, which own at

[6] *Rollo* (Vol. I), p. 23.

least five percent of common equity, will collectively own 81.47 percent of PLDT's common equity. x x x

x x x as the annual disclosure reports, also referred to as Form 20-K reports x x x which PLDT submitted to the New York Stock Exchange for the period 2003-2005, revealed that First Pacific and several other foreign entities breached the constitutional limit of 40 percent ownership as early as 2003. x x x[7]

Petitioner raises the following issues: (1) whether the consummation of the then impending sale of 111,415 PTIC shares to First Pacific violates the constitutional limit on foreign ownership of a public utility; (2) whether public respondents committed grave abuse of discretion in allowing the sale of the 111,415 PTIC shares to First Pacific; and (3) whether the sale of common shares to foreigners in excess of 40 percent of the entire subscribed common capital stock violates the constitutional limit on foreign ownership of a public utility.[8]

On 13 August 2007, Pablito V. Sanidad and Arno V. Sanidad filed a Motion for Leave to Intervene and Admit Attached Petition-in-Intervention. In the Resolution of 28 August 2007, the Court granted the motion and noted the Petition-in-Intervention.

Petitioners-in-intervention "join petitioner Wilson Gamboa x x x in seeking, among others, to enjoin and/or nullify the sale by respondents of the 111,415 PTIC shares to First Pacific or assignee." Petitioners-in-intervention claim that, as PLDT subscribers, they have a "stake in the outcome of the controversy x x x where the Philippine Government is completing the sale of government owned assets in [PLDT], unquestionably a public utility, in violation of the nationality restrictions of the Philippine Constitution."

The Issue

This Court is not a trier of facts. Factual questions such as those raised by petitioner,[9] which indisputably demand a thorough

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[7] *Id.* at 23-24, 26.

[8] *Id.* at 41.

[9] *Id.*

examination of the evidence of the parties, are generally beyond this Court's jurisdiction. Adhering to this well-settled principle, the Court shall confine the resolution of the instant controversy solely on the **threshold and purely legal issue** of whether the term "capital" in Section 11, Article XII of the Constitution refers to the total common shares only or to the total outstanding capital stock (combined total of common and non-voting preferred shares) of PLDT, a public utility.

The Ruling of the Court

The petition is partly meritorious.

Petition for declaratory relief treated as petition for mandamus

At the outset, petitioner is faced with a procedural barrier. Among the remedies petitioner seeks, only the petition for prohibition is within the original jurisdiction of this court, which however is not exclusive but is concurrent with the Regional Trial Court and the Court of Appeals. The actions for declaratory relief,[10] injunction, and annulment of sale are not embraced within the original jurisdiction of the Supreme Court. On this ground alone, the petition could have been dismissed outright.

While direct resort to this Court may be justified in a petition for prohibition,[11] the Court shall nevertheless refrain from

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[10] Governed by Rule 63 of the Rules of Court. Section 1, Rule 63 of the Rules of Court states:

RULE 63

Declaratory Relief and Similar Remedies

Section 1. *Who may file petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Bar Matter No. 803, 17 February 1998)

[11] Section 2, Rule 65 of the Rules of Court provides:

SEC. 2. Petition for prohibition. — When the proceedings of any tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction,

discussing the grounds in support of the petition for prohibition since on 28 February 2007, the questioned sale was consummated when MPAH paid IPC ₱25,217,556,000 and the government delivered the certificates for the 111,415 PTIC shares.

However, since the threshold and purely legal issue on the definition of the term "capital" in Section 11, Article XII of the Constitution has far-reaching implications to the national economy, the Court treats the petition for declaratory relief as one for *mandamus*.[12]

In *Salvacion v. Central Bank of the Philippines*,[13] the Court treated the petition for declaratory relief as one for *mandamus* considering the grave injustice that would result in the interpretation of a banking law. In that case, which involved the crime of rape committed by a foreign tourist against a Filipino minor and the execution of the final judgment in the civil case for damages on the tourist's dollar deposit with a local bank,

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or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental relief as law and justice may require.

x x x x x x x x x

[12] Section 3, Rule 65 of the Rules of Court states:

SEC. 3. Petition for *mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

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[13] 343 Phil. 539 (1997).

the Court declared Section 113 of Central Bank Circular No. 960, exempting foreign currency deposits from attachment, garnishment or any other order or process of any court, inapplicable due to the peculiar circumstances of the case. The Court held that "injustice would result especially to a citizen aggrieved by a foreign guest like accused x x x" that would "negate Article 10 of the Civil Code which provides that 'in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.'" The Court therefore required respondents Central Bank of the Philippines, the local bank, and the accused to comply with the writ of execution issued in the civil case for damages and to release the dollar deposit of the accused to satisfy the judgment.

In *Alliance of Government Workers v. Minister of Labor*,[14] the Court similarly brushed aside the procedural infirmity of the petition for declaratory relief and treated the same as one for *mandamus*. In *Alliance*, the issue was whether the government unlawfully excluded petitioners, who were government employees, from the enjoyment of rights to which they were entitled under the law. Specifically, the question was: "Are the branches, agencies, subdivisions, and instrumentalities of the Government, including government owned or controlled corporations included among the four 'employers' under Presidential Decree No. 851 which are required to pay their employees x x x a thirteenth (13th) month pay x x x ?" The Constitutional principle involved therein affected all government employees, clearly justifying a relaxation of the technical rules of procedure, and certainly requiring the interpretation of the assailed presidential decree.

In short, it is well-settled that this Court may treat a petition for declaratory relief as one for *mandamus* if the issue involved has far-reaching implications. As this Court held in *Salvacion*:

The Court has no original and exclusive jurisdiction over a petition for declaratory relief. **However, exceptions to this rule have been recognized. Thus, where the petition has far-reaching implications**

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[14] 209 Phil. 1 (1983), citing *Nacionalista Party v. Angelo Bautista*, 85 Phil. 101, and *Aquino v. Commission on Elections*, 62 SCRA 275.

and raises questions that should be resolved, it may be treated as one for *mandamus*.[15] (Emphasis supplied)

In the present case, petitioner seeks primarily the interpretation of the term "capital" in Section 11, Article XII of the Constitution. He prays that this Court declare that the term "capital" refers to common shares only, and that such shares constitute "the sole basis in determining foreign equity in a public utility." Petitioner further asks this Court to declare any ruling inconsistent with such interpretation unconstitutional.

The interpretation of the term "capital" in Section 11, Article XII of the Constitution has far-reaching implications to the national economy. In fact, a resolution of this issue will determine whether Filipinos are masters, or second class citizens, in their own country. What is at stake here is whether Filipinos or foreigners will have ***effective control*** of the national economy. Indeed, if ever there is a legal issue that has far-reaching implications to the entire nation, and to future generations of Filipinos, it is the threshold legal issue presented in this case.

The Court first encountered the issue on the definition of the term "capital" in Section 11, Article XII of the Constitution in the case of *Fernandez v. Cojuangco,* docketed as G.R. No. 157360.[16] That case involved the same public utility (PLDT) and substantially the same private respondents. Despite the importance and novelty of the constitutional issue raised therein and despite the fact that the petition involved a purely legal question, the Court declined to resolve the case on the merits, and instead denied the same for disregarding the hierarchy of courts.[17] There, petitioner Fernandez assailed on a pure question

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[15] *Supra* note 13.

[16] Adverted to in respondent Nazareno's Memorandum dated 27 September 2007. *Rollo*, p. 929. Nazareno stated: "In fact, in *Fernandez v. Cojuangco*, which raised markedly similar issues, the Honorable Court refused to entertain the Petition directly filed with it and dismissed the same for violating the principle of hierarchy of courts."

[17] In a Resolution dated 9 June 2003.

of law the Regional Trial Court's Decision of 21 February 2003 *via* a petition for review under Rule 45. The Court's Resolution, denying the petition, became final on 21 December 2004.

The instant petition therefore presents the Court with another opportunity to finally settle this **purely legal issue** which is of transcendental importance to the national economy and a fundamental requirement to a faithful adherence to our Constitution. The Court must forthwith seize such opportunity, not only for the benefit of the litigants, but more significantly for the benefit of the entire Filipino people, to ensure, in the words of the Constitution, "a self-reliant and independent national economy **effectively controlled** by Filipinos."[18] Besides, in the light of vague and confusing positions taken by government agencies on this purely legal issue, present and future foreign investors in this country deserve, as a matter of basic fairness, a categorical ruling from this Court on the extent of their participation in the capital of public utilities and other nationalized businesses.

Despite its far-reaching implications to the national economy, this purely legal issue has remained unresolved for over 75 years since the 1935 Constitution. There is no reason for this Court to evade this ever recurring fundamental issue and delay again defining the term "capital," which appears not only in Section 11, Article XII of the Constitution, but also in Section 2, Article XII on co-production and joint venture agreements for the development of our natural resources,[19] in Section 7, Article XII

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[18] Section 19, Article II, Constitution.

[19] Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. **The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens.** Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under

on ownership of private lands,[20] in Section 10, Article XII on the reservation of certain investments to Filipino citizens,[21] in Section 4(2), Article XIV on the ownership of educational institutions,[22]

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such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish-workers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

[20] Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to **individuals, corporations, or associations qualified to acquire or hold lands of the public domain.**

[21] Section 10. **The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments.** The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

[22] Section 4(2), Article XIV of the 1987 Constitution provides: "**Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens.** The Congress may, however, require increased Filipino equity participation in all educational institutions.

and in Section 11(2), Article XVI on the ownership of advertising companies.[23]

Petitioner has locus standi

There is no dispute that petitioner is a stockholder of PLDT. As such, he has the right to question the subject sale, which he claims to violate the nationality requirement prescribed in Section 11, Article XII of the Constitution. If the sale indeed violates the Constitution, then there is a possibility that PLDT's franchise could be revoked, a dire consequence directly affecting petitioner's interest as a stockholder.

More importantly, there is no question that the instant petition raises matters of transcendental importance to the public. The fundamental and threshold legal issue in this case, involving the national economy and the economic welfare of the Filipino people, far outweighs any perceived impediment in the legal personality of the petitioner to bring this action.

In *Chavez v. PCGG*,[24] the Court upheld the right of a citizen to bring a suit on matters of transcendental importance to the public, thus:

The control and administration of educational institutions shall be vested in citizens of the Philippines.

x x x x x x x x x"

[23] Section 11(2), Article XVI of the 1987 Constitution provides: "The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare.

Only Filipino citizens or corporations or associations at least seventy *per centum* of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry.

The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.

[24] G.R. No. 130716, 9 December 1998, 299 SCRA 744 cited in *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002). See also *David v. Macapagal-Arroyo*, G.R. No. 171396, 3 May 2006, 489 SCRA 160; *Santiago v. Commission on Elections*, G.R. No. 127325, 19 March 1997, 270 SCRA 106; *Kilosbayan, Inc. v. Guingona, Jr.*, G.R. No. 113375, 5 May 1994, 232 SCRA 110 (1994).

In *Tañada v. Tuvera*, the Court asserted that **when the issue concerns a public right and the object of *mandamus* is to obtain the enforcement of a public duty, the people are regarded as the real parties in interest; and because it is sufficient that petitioner is a citizen and as such is interested in the execution of the laws, he need not show that he has any legal or special interest in the result of the action**. In the aforesaid case, the petitioners sought to enforce their right to be informed on matters of public concern, a right then recognized in Section 6, Article IV of the 1973 Constitution, in connection with the rule that laws in order to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated. In ruling for the petitioners' legal standing, the Court declared that the right they sought to be enforced 'is a public right recognized by no less than the fundamental law of the land.'

Legaspi v. Civil Service Commission, while reiterating Tañada, further declared that '**when a *mandamus* proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that petitioner is a citizen and, therefore, part of the general 'public' which possesses the right**.'

Further, in *Albano v. Reyes*, we said that while expenditure of public funds may not have been involved under the questioned contract for the development, management and operation of the Manila International Container Terminal, '**public interest [was] definitely involved considering the important role [of the subject contract] . . . in the economic development of the country and the magnitude of the financial consideration involved**.' We concluded that, as a consequence, the disclosure provision in the Constitution would constitute sufficient authority for upholding the petitioner's standing. (Emphasis supplied)

Clearly, since the instant petition, brought by a citizen, involves matters of transcendental public importance, the petitioner has the requisite *locus standi*.

Definition of the Term "Capital" in Section 11, Article XII of the 1987 Constitution

Section 11, Article XII (National Economy and Patrimony) of the 1987 Constitution mandates the Filipinization of public utilities, to wit:

Section 11. **No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens**; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. (Emphasis supplied)

The above provision substantially reiterates Section 5, Article XIV of the 1973 Constitution, thus:

Section 5. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of the capital of which is owned by such citizens, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires. The State shall encourage equity participation in public utilities by the general public. The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in the capital thereof. (Emphasis supplied)

The foregoing provision in the 1973 Constitution reproduced Section 8, Article XIV of the 1935 Constitution, *viz*:

Section 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines sixty per centum of the capital of which is owned by citizens of the

Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires. (Emphasis supplied)

Father Joaquin G. Bernas, S.J., a leading member of the 1986 Constitutional Commission, reminds us that the Filipinization provision in the 1987 Constitution is one of the products of the spirit of nationalism which gripped the 1935 Constitutional Convention.[25] The 1987 Constitution "provides for the Filipinization of public utilities by requiring that any form of authorization for the operation of public utilities should be granted only to 'citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens.' **The provision is [an express] recognition of the sensitive and vital position of public utilities both in the national economy and for national security**."[26] The evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest.[27] This specific provision explicitly reserves to Filipino citizens control of public utilities, pursuant to an overriding economic goal of the 1987 Constitution: to "conserve and develop our patrimony"[28] and ensure "a self-reliant and independent national economy ***effectively controlled*** by Filipinos."[29]

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[25] BERNAS, *THE CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES*, p. 452, citing *Smith, Bell and Co. v. Natividad*, 40 Phil. 136, 148 (1919); *Luzon Stevedoring Corporation v. Anti-Dummy Board*, 46 SCRA 474, 490 (1972).

[26] *Id.*

[27] DE LEON, HECTOR, *PHILIPPINE CONSTITUTIONAL LAW (PRINCIPLES AND CASES)*, Volume 2, 1999 Ed., p. 848.

[28] Preamble, 1987 Constitution; DE LEON, HECTOR, *PHILIPPINE CONSTITUTIONAL LAW (PRINCIPLES AND CASES)*, Volume 2, 1999 Ed., p. 788.

[29] Section 19, Article II, Constitution.

Any citizen or juridical entity desiring to operate a public utility must therefore meet the minimum nationality requirement prescribed in Section 11, Article XII of the Constitution. Hence, for a corporation to be granted authority to operate a public utility, at least 60 percent of its "capital" must be owned by Filipino citizens.

The crux of the controversy is the definition of the term "**capital**." Does the term "capital" in Section 11, Article XII of the Constitution refer to common shares or to the total outstanding capital stock (combined total of common and non-voting preferred shares)?

Petitioner submits that the 40 percent foreign equity limitation in domestic public utilities refers only to common shares because such shares are entitled to vote and it is through voting that control over a corporation is exercised. Petitioner posits that the term "capital" in Section 11, Article XII of the Constitution refers to "the ownership of common capital stock subscribed and outstanding, which class of shares alone, under the corporate set-up of PLDT, can vote and elect members of the board of directors." It is undisputed that PLDT's non-voting preferred shares are held mostly by Filipino citizens.[30] This arose from Presidential Decree No. 217,[31] issued on 16 June 1973 by then President Ferdinand Marcos, requiring every applicant of a PLDT telephone line to subscribe to non-voting preferred shares to pay for the investment cost of installing the telephone line.[32]

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[30] http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_%28as%20of_%207.2.10%29_final.pdf

[31] ESTABLISHING BASIC POLICIES FOR THE TELEPHONE INDUSTRY, AMENDING FOR THE PURPOSE THE PERTINENT PROVISIONS OF COMMONWEALTH ACT NO. 146, AS AMENDED, OTHERWISE KNOWN AS THE PUBLIC SERVICE ACT, AS AMENDED, AND ALL INCONSISTENT LEGISLATIVE AND MUNICIPAL FRANCHISE OF THE PHILIPPINE LONG DISTANCE TELEPHONE COMPANY UNDER ACT NO. 3436, AS AMENDED, AND ALL INCONSISTENT LEGISLATIVE AND MUNICIPAL FRANCHISES INCLUDING OTHER EXISTING LAWS.

[32] Upon approval by the National Telecommunications Commission, this mandatory requirement to subscribe to non-voting preferred shares was made optional starting 22 April 2003. See PLDT 20- F 2005 filing with the United States Securities and Exchange Commission at http://www.wikinvest.com/

Petitioners-in-intervention basically reiterate petitioner's arguments and adopt petitioner's definition of the term "capital."[33] Petitioners-in-intervention allege that "the approximate foreign ownership of common capital stock of PLDT x x x already amounts to at least 63.54% of the total outstanding common stock," which means that foreigners exercise significant control over PLDT, patently violating the 40 percent foreign equity limitation in public utilities prescribed by the Constitution.

Respondents, on the other hand, do not offer any definition of the term "capital" in Section 11, Article XII of the Constitution. More importantly, private respondents Nazareno and Pangilinan of PLDT do not dispute that more than 40 percent of the common shares of PLDT are held by foreigners.

In particular, respondent Nazareno's Memorandum, consisting of 73 pages, harps mainly on the procedural infirmities of the petition and the supposed violation of the due process rights of the "affected foreign common shareholders." Respondent Nazareno does not deny petitioner's allegation of foreigners' dominating the common shareholdings of PLDT. Nazareno stressed mainly that the petition "**seeks to divest foreign common shareholders purportedly exceeding 40% of the total common shareholdings in PLDT of their ownership over their shares**." Thus, "the foreign natural and juridical PLDT shareholders must be impleaded in this suit so that they can be heard."[34] Essentially, Nazareno invokes denial of due process on behalf of the foreign common shareholders.

While Nazareno does not introduce any definition of the term "capital," he states that "**among the factual assertions that need to be established to counter petitioner's allegations is the uniform interpretation by government agencies (such as the SEC), institutions and corporations (such as the**

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stock/Philippine Long Distance Telephone Company (PHI)/ Filing/20-F/2—5/F2923101. See also *Philippine Consumers Foundation, Inc. v. NTC and PLDT*, G.R. No. 63318, 18 April 1984, on the origin and rationale of the SIP.

[33] *Rollo* (Vol. I), pp. 414-451.

[34] *Rollo* (Vol. II), p. 991.

Philippine National Oil Company-Energy Development Corporation or PNOC-EDC) of including both preferred shares and common shares in "controlling interest" in view of testing compliance with the 40% constitutional limitation on foreign ownership in public utilities."[35]

Similarly, respondent Manuel V. Pangilinan does not define the term "capital" in Section 11, Article XII of the Constitution. Neither does he refute petitioner's claim of foreigners holding more than 40 percent of PLDT's common shares. Instead, respondent Pangilinan focuses on the procedural flaws of the petition and the alleged violation of the due process rights of foreigners. Respondent Pangilinan emphasizes in his Memorandum (1) the absence of this Court's jurisdiction over the petition; (2) petitioner's lack of standing; (3) mootness of the petition; (4) non-availability of declaratory relief; and (5) the denial of due process rights. Moreover, respondent Pangilinan alleges that the issue should be whether "owners of shares in PLDT as well as owners of shares in companies holding shares in PLDT may be required to relinquish their shares in PLDT and in those companies without any law requiring them to surrender their shares and also without notice and trial."

Respondent Pangilinan further asserts that "**Section 11, [Article XII of the Constitution] imposes no nationality requirement on the shareholders of the utility company as a condition for keeping their shares in the utility company.**" According to him, "Section 11 does not authorize taking one person's property (the shareholder's stock in the utility company) on the basis of another party's alleged failure to satisfy a requirement that is a condition only for that other party's retention of another piece of property (the utility company being at least 60% Filipino-owned to keep its franchise)."[36]

The OSG, representing public respondents Secretary Margarito Teves, Undersecretary John P. Sevilla, Commissioner Ricardo Abcede, and Chairman Fe Barin, is likewise silent on the definition

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[35] *Id.* at 951.

[36] *Id.* at 838.

of the term "capital." In its Memorandum[37] dated 24 September 2007, the OSG also limits its discussion on the supposed procedural defects of the petition, *i.e*. lack of standing, lack of jurisdiction, non-inclusion of interested parties, and lack of basis for injunction. The OSG does not present any definition or interpretation of the term "capital" in Section 11, Article XII of the Constitution. The OSG contends that "the petition actually partakes of a collateral attack on PLDT's franchise as a public utility," which in effect requires a "full-blown trial where all the parties in interest are given their day in court."[38]

Respondent Francisco Ed Lim, impleaded as President and Chief Executive Officer of the Philippine Stock Exchange (PSE), does not also define the term "capital" and seeks the dismissal of the petition on the following grounds: (1) failure to state a cause of action against Lim; (2) the PSE allegedly implemented its rules and required all listed companies, including PLDT, to make proper and timely disclosures; and (3) the reliefs prayed for in the petition would adversely impact the stock market.

In the earlier case of *Fernandez v. Cojuangco*, petitioner Fernandez who claimed to be a stockholder of record of PLDT, contended that the term "capital" in the 1987 Constitution refers to shares entitled to vote or the common shares. Fernandez explained thus:

> The forty percent (40%) foreign equity limitation in public utilities prescribed by the Constitution refers to ownership of shares of stock entitled to vote, *i.e.*, common shares, considering that it is through voting that control is being exercised. x x x
>
> Obviously, the intent of the framers of the Constitution in imposing limitations and restrictions on fully nationalized and partially nationalized activities is for Filipino nationals to be always in control of the corporation undertaking said activities. Otherwise, if the Trial Court's ruling upholding respondents' arguments were to be given credence, it would be possible for the ownership structure of a public utility corporation to be divided into one percent (1%) common

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[37] *Id.* at 898-923.

[38] *Rollo* (Vol. II), p. 913.

stocks and ninety-nine percent (99%) preferred stocks. Following the Trial Court's ruling adopting respondents' arguments, the common shares can be owned entirely by foreigners thus creating an absurd situation wherein foreigners, who are supposed to be minority shareholders, control the public utility corporation.

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Thus, the 40% foreign ownership limitation should be interpreted to apply to both the beneficial ownership and the controlling interest.

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Clearly, therefore, the forty percent (40%) foreign equity limitation in public utilities prescribed by the Constitution refers to ownership of shares of stock entitled to vote, *i.e.*, common shares. Furthermore, ownership of record of shares will not suffice but it must be shown that the legal and beneficial ownership rests in the hands of Filipino citizens. Consequently, in the case of petitioner PLDT, since it is already admitted that the voting interests of foreigners which would gain entry to petitioner PLDT by the acquisition of SMART shares through the Questioned Transactions is equivalent to 82.99%, and the nominee arrangements between the foreign principals and the Filipino owners is likewise admitted, there is, therefore, a violation of Section 11, Article XII of the Constitution.

Parenthetically, the Opinions dated February 15, 1988 and April 14, 1987 cited by the Trial Court to support the proposition that the meaning of the word "capital" as used in Section 11, Article XII of the Constitution allegedly refers to the sum total of the shares subscribed and paid-in by the shareholder and it allegedly is immaterial how the stock is classified, whether as common or preferred, cannot stand in the face of a clear legislative policy as stated in the FIA which took effect in 1991 or way after said opinions were rendered, and as clarified by the above-quoted Amendments. In this regard, suffice it to state that as between the law and an opinion rendered by an administrative agency, the law indubitably prevails. Moreover, said Opinions are merely advisory and cannot prevail over the clear intent of the framers of the Constitution.

In the same vein, the SEC's construction of Section 11, Article XII of the Constitution is at best merely advisory for it is the courts that finally determine what a law means.[39]

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[39] *Rollo* (G.R. No. 157360), pp. 55-62.

On the other hand, respondents therein, Antonio O. Cojuangco, Manuel V. Pangilinan, Carlos A. Arellano, Helen Y. Dee, Magdangal B. Elma, Mariles Cacho-Romulo, Fr. Bienvenido F. Nebres, Ray C. Espinosa, Napoleon L. Nazareno, Albert F. Del Rosario, and Orlando B. Vea, argued that the term "capital" in Section 11, Article XII of the Constitution includes preferred shares since the Constitution does not distinguish among classes of stock, thus:

16. The Constitution applies its foreign ownership limitation on the corporation's "capital," without distinction as to classes of shares. x x x

In this connection, the Corporation Code — which was already in force at the time the present (1987) Constitution was drafted — defined outstanding capital stock as follows:

> Section 137. Outstanding capital stock defined. — The term "outstanding capital stock," as used in this Code, means the total shares of stock issued under binding subscription agreements to subscribers or stockholders, whether or not fully or partially paid, except treasury shares.

Section 137 of the Corporation Code also does not distinguish between common and preferred shares, nor exclude either class of shares, in determining the outstanding capital stock (the "capital") of a corporation. Consequently, petitioner's suggestion to reckon PLDT's foreign equity only on the basis of PLDT's outstanding common shares is without legal basis. The language of the Constitution should be understood in the sense it has in common use.

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17. But even assuming that resort to the proceedings of the Constitutional Commission is necessary, there is nothing in the Record of the Constitutional Commission (Vol. III) — which petitioner misleadingly cited in the Petition x x x — which supports petitioner's view that only common shares should form the basis for computing a public utility's foreign equity.

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18. In addition, the SEC — the government agency primarily responsible for implementing the Corporation Code, and which also has the responsibility of ensuring compliance with the Constitution's

foreign equity restrictions as regards nationalized activities x x x — has categorically ruled that both common and preferred shares are properly considered in determining outstanding capital stock and the nationality composition thereof.[40]

We agree with petitioner and petitioners-in-intervention. The term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares,[41] and not to the total outstanding capital stock comprising both common and non-voting preferred shares.

The Corporation Code of the Philippines[42] classifies shares as common or preferred, thus:

Sec. 6. *Classification of shares.* — The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, **That no share may be deprived of voting rights except those classified and issued as "preferred" or "redeemable" shares, unless otherwise provided in this Code**: Provided, further, That there shall always be a class or series of shares which have complete voting rights. Any or all of the shares or series of shares may have a par value or have no par value as may be provided for in the articles of incorporation: Provided, however, That banks, trust companies, insurance companies, public utilities, and building and loan associations shall not be permitted to issue no-par value shares of stock.

Preferred shares of stock issued by any corporation may be given preference in the distribution of the assets of the corporation in case of liquidation and in the distribution of dividends, or such other preferences as may be stated in the articles of incorporation which are not violative of the provisions of this Code: Provided, That preferred shares of stock may be issued only with a stated par value.

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[40] *Rollo* (G.R. No. 157360), pp. 1577-1583.

[41] In PLDT's case, the preferred stock is non-voting, except as specifically provided by law. (http://www.pldt.com.ph/investor/Documents/a2d211230ec3436eab66b41d3d107cfc4Q2004FSwithopinion.pdf)

[42] Batas Pambansa Blg. 68.

The Board of Directors, where authorized in the articles of incorporation, may fix the terms and conditions of preferred shares of stock or any series thereof: Provided, That such terms and conditions shall be effective upon the filing of a certificate thereof with the Securities and Exchange Commission.

Shares of capital stock issued without par value shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: Provided; That shares without par value may not be issued for a consideration less than the value of five (₱5.00) pesos per share: Provided, further, That the entire consideration received by the corporation for its no-par value shares shall be treated as capital and shall not be available for distribution as dividends.

A corporation may, furthermore, classify its shares for the purpose of insuring compliance with constitutional or legal requirements.

Except as otherwise provided in the articles of incorporation and stated in the certificate of stock, each share shall be equal in all respects to every other share.

Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:

1. Amendment of the articles of incorporation;

2. Adoption and amendment of by-laws;

3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;

4. Incurring, creating or increasing bonded indebtedness;

5. Increase or decrease of capital stock;

6. Merger or consolidation of the corporation with another corporation or other corporations;

7. Investment of corporate funds in another corporation or business in accordance with this Code; and

8. Dissolution of the corporation.

Except as provided in the immediately preceding paragraph, the vote necessary to approve a particular corporate act as provided in this Code shall be deemed to refer only to stocks with voting rights.

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation.[43] This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation.[44] In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders.[45] In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote.[46] Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid.[47]

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term "capital" in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term "capital" shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. **In short, the term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.**

This interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the

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[43] As stated in the Corporation Code.

[44] See http://www.congress.gov.ph/download/researches/rrb_0303_5.pdf

[45] See http://www.congress.gov.ph/download/researches/rrb_0303_5.pdf

[46] Section 6, BP Blg. 68 or The Corporation Code.

[47] AGPALO, RUBEN E., C*OMMENTS ON THE CORPORATION CODE OF THE PHILIPPINES*, 2001 Second Edition, p. 36.

control and management of public utilities. As revealed in the deliberations of the Constitutional Commission, "capital" refers to the voting stock or **controlling interest** of a corporation, to wit:

MR. NOLLEDO. In Sections 3, 9 and 15, the Committee stated local or Filipino equity and foreign equity; namely, 60-40 in Section 3, 60-40 in Section 9 and 2/3-1/3 in Section 15.

MR. VILLEGAS. That is right.

MR. NOLLEDO. In teaching law, we are always faced with this question: "Where do we base the equity requirement, is it on the authorized capital stock, on the subscribed capital stock, or on the paid-up capital stock of a corporation"? Will the Committee please enlighten me on this?

MR. VILLEGAS. We have just had a long discussion with the members of the team from the UP Law Center who provided us a draft. **The phrase that is contained here which we adopted from the UP draft is "60 percent of voting stock."**

MR. NOLLEDO. That must be based on the subscribed capital stock, because unless declared delinquent, unpaid capital stock shall be entitled to vote.

MR. VILLEGAS. That is right.

MR. NOLLEDO. Thank you.

With respect to an investment by one corporation in another corporation, say, a corporation with 60-40 percent equity invests in another corporation which is permitted by the Corporation Code, does the Committee adopt the grandfather rule?

MR. VILLEGAS. Yes, that is the understanding of the Committee.

MR. NOLLEDO. Therefore, we need additional Filipino capital?

MR. VILLEGAS. Yes.[48]

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MR. AZCUNA. May I be clarified as to that portion that was accepted by the Committee.

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[48] Record of the Constitutional Commission, Vol. III, pp. 255-256.

MR. VILLEGAS. The portion accepted by the Committee is the deletion of the phrase "voting stock or controlling interest."

MR. AZCUNA. Hence, without the Davide amendment, the committee report would read: "corporations or associations at least sixty percent of whose CAPITAL is owned by such citizens."

MR. VILLEGAS. Yes.

MR. AZCUNA. So if the Davide amendment is lost, we are stuck with 60 percent of the capital to be owned by citizens.

MR. VILLEGAS. That is right.

MR. AZCUNA. But the control can be with the foreigners even if they are the minority. Let us say 40 percent of the capital is owned by them, but it is the voting capital, whereas, the Filipinos own the nonvoting shares. So we can have a situation where the corporation is controlled by foreigners despite being the minority because they have the voting capital. That is the anomaly that would result here.

MR. BENGZON. No, the reason we eliminated the word "stock" as stated in the 1973 and 1935 Constitutions is that according to Commissioner Rodrigo, there are associations that do not have stocks. That is why we say "CAPITAL."

MR. AZCUNA. We should not eliminate the phrase "controlling interest."

MR. BENGZON. In the case of stock corporations, it is assumed.[49] (Emphasis supplied)

Thus, 60 percent of the "capital" assumes, or should result in, "**controlling interest**" in the corporation. Reinforcing this interpretation of the term "capital," as referring to controlling interest or shares entitled to vote, is the definition of a "Philippine national" in the Foreign Investments Act of 1991,[50] to wit:

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[49] *Id.* at 360.

[50] Republic Act No. 7042 entitled "AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES AND FOR OTHER PURPOSES."

SEC. 3. *Definitions.* — As used in this Act:

a. The term "*Philippine national"* shall mean a citizen of the Philippines; or a domestic partnership or association wholly owned by citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines**; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: *Provided,* That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation, shall be considered a "Philippine national." (Emphasis supplied)

In explaining the definition of a "Philippine national," the Implementing Rules and Regulations of the Foreign Investments Act of 1991 provide:

b. "*Philippine national*" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty percent [60%] of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines**; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent [60%] of the fund will accrue to the benefit of the Philippine nationals; *Provided,* that where a corporation its non-Filipino stockholders own stocks in a Securities and Exchange Commission [SEC] registered enterprise, at least sixty percent [60%] of the capital stock outstanding and entitled to vote of both corporations must be owned and held by citizens of the Philippines and at least sixty percent [60%] of the members of the Board of Directors of each of both corporation

must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national. The control test shall be applied for this purpose.

Compliance with the required Filipino ownership of a corporation shall be determined on the basis of outstanding capital stock whether fully paid or not, but only such stocks which are generally entitled to vote are considered.

For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.

Individuals or juridical entities not meeting the aforementioned qualifications are considered as non-Philippine nationals. (Emphasis supplied)

Mere legal title is insufficient to meet the 60 percent Filipino-owned "capital" required in the Constitution. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is "considered as non-Philippine national[s]."

Under Section 10, Article XII of the Constitution, Congress may "reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments." Thus, in numerous laws Congress has reserved certain areas of investments to Filipino citizens or to corporations at least sixty percent of the "**capital**" of which is owned by Filipino citizens. Some of these laws are: (1) Regulation of Award of Government Contracts or R.A. No. 5183; (2) Philippine Inventors Incentives Act or R.A. No. 3850; (3) Magna Carta for Micro, Small and Medium Enterprises or R.A. No. 6977; (4) Philippine Overseas Shipping Development

Act or R.A. No. 7471; (5) Domestic Shipping Development Act of 2004 or R.A. No. 9295; (6) Philippine Technology Transfer Act of 2009 or R.A. No. 10055; and (7) Ship Mortgage Decree or P.D. No. 1521. Hence, the term "**capital**" in Section 11, Article XII of the Constitution is also used **in the same context in numerous laws** reserving certain areas of investments to Filipino citizens.

To construe broadly the term "capital" as the total outstanding capital stock, including both common and *non-voting* preferred shares, grossly contravenes the intent and letter of the Constitution that the "State shall develop a self-reliant and independent national economy ***effectively controlled*** by Filipinos." A broad definition unjustifiably disregards who owns the all-important voting stock, which necessarily equates to control of the public utility.

We shall illustrate the glaring anomaly in giving a broad definition to the term "capital." Let us assume that a corporation has 100 common shares owned by foreigners and 1,000,000 non-voting preferred shares owned by Filipinos, with both classes of share having a par value of one peso (₱1.00) per share. Under the broad definition of the term "capital," such corporation would be considered compliant with the 40 percent constitutional limit on foreign equity of public utilities since the overwhelming majority, or more than 99.999 percent, of the total outstanding capital stock is Filipino owned. This is obviously absurd.

In the example given, only the foreigners holding the common shares have voting rights in the election of directors, even if they hold only 100 shares. The foreigners, with a minuscule equity of less than 0.001 percent, exercise control over the public utility. On the other hand, the Filipinos, holding more than 99.999 percent of the equity, cannot vote in the election of directors and hence, have no control over the public utility. This starkly circumvents the intent of the framers of the Constitution, as well as the clear language of the Constitution, to place the control of public utilities in the hands of Filipinos. It also renders illusory the State policy of an independent national economy ***effectively controlled*** by Filipinos.

The example given is not theoretical but can be found in the real world, ***and in fact exists in the present case***.

Holders of PLDT preferred shares are explicitly denied of the right to vote in the election of directors. PLDT's Articles of Incorporation expressly state that "**the holders of Serial Preferred Stock shall not be entitled to vote at any meeting of the stockholders for the election of directors or for any other purpose** or otherwise participate in any action taken by the corporation or its stockholders, or to receive notice of any meeting of stockholders."[51]

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[51] *Rollo* (G.R. No. 157360), Vol. I, p. 348.

It must be noted that under PLDT's Articles of Incorporation, the PLDT Board of Directors is expressly authorized to determine, among others, with respect to each series of Serial Preferred Stock:

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(b) the dividend rate, if any, on the shares of such series (which, if and to the extent the Board of Directors, in its sole discretion, shall deem appropriate under the circumstances, shall be fixed considering the rate of return on similar securities at the time of issuance of such shares), the terms and conditions upon which and the periods with respect to which dividends shall be payable, whether and upon what conditions such dividends shall be cumulative and, if cumulative, the date or dates from which dividends shall accumulate;

(c) whether or not the shares of such series shall be redeemable, the limitations with respect to such redemption, the time or times when and the manner in which such shares shall be redeemable (including the manner of selecting shares of such series for redemption if less than all shares are to be redeemed) and the price or prices at which such shares shall be redeemable, which may not be less than (i) the par value thereof plus (ii) accrued and unpaid dividends thereon, nor more than (i) 110% of the par value thereof plus (ii) accrued and unpaid dividends thereon;

(d) whether or not the shares of such series shall be subject to the operation of a purchase, retirement or sinking fund, and, if so, whether and upon what conditions such purchase, retirement or sinking fund shall be cumulative or non-cumulative, the extent to which and the manner in which such fund shall be applied to the purchase or redemption of the shares of such series for retirement or to other corporate purposes and the terms and provisions relative to the operation thereof;

(e) the rights to which the holders of shares of such series shall be entitled upon the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the corporation, which rights may vary depending on whether

On the other hand, holders of common shares are granted the exclusive right to vote in the election of directors. PLDT's Articles of Incorporation[52] state that "each holder of Common Capital Stock shall have one vote in respect of each share of such stock held by him on all matters voted upon by the stockholders, and **the holders of Common Capital Stock shall have the exclusive right to vote for the election of directors and for all other purposes.**"[53]

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such liquidation, dissolution, distribution or winding up is voluntary or involuntary, and if voluntary, may vary at different dates, provided, however, that the amount which the holders of shares of such series shall be entitled to receive in the event of any voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the corporation;

Further, "the holders of Serial Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefore, preferential cash dividends at the rate, under the terms and conditions, for the periods and on the dates fixed by the resolution or resolutions of the Board of Directors, x x x and no more, before any dividends on the Common Capital Stock (other than dividends payable in Common Capital Stock) shall be paid or set apart for payment with respect to the same dividend period. All shares of Preferred Stock of all series shall be of equal rank, preference and priority as to dividends irrespective of whether or not the rates of dividends to which the same shall be entitled shall be the same and, when the stated dividends are not paid in full, the shares of all series of Serial Preferred Stock shall share ratably in the payment of dividends including accumulations, if any, in accordance with the sums which would be payable on such shares if all dividends were declared and paid in full, provided, however, that any two or more series of Serial Preferred Stock may differ from each other as to the existence and extent of the right to cumulative dividends as aforesaid."

[52] *Rollo* (G.R. No. 157360), Vol. I, pp. 339-355. Adopted on 21 November 1995 and approved on 18 February 1997.

[53] The other rights, limitations and preferences of common capital stock are as follows:

1. After the requirements with respect to preferential dividends on the Serial Preferred Stock shall have been met and after the corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums as purchase, retirement or sinking funds, then and not otherwise the holders of the Common Capital Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors out of funds legally available therefor.

2. After distribution in full of the preferential amounts to be distributed to the holders of Serial Preferred Stock in the event of the voluntary or involuntary

In short, only holders of common shares can vote in the election of directors, meaning only common shareholders exercise control over PLDT. Conversely, holders of preferred shares, who have no voting rights in the election of directors, do not have any control over PLDT. In fact, under PLDT's Articles of Incorporation, holders of common shares have voting rights for all purposes, while holders of preferred shares have no voting right for any purpose whatsoever.

It must be stressed, and **respondents do not dispute**, that foreigners hold a majority of the common shares of PLDT. In fact, based on PLDT's 2010 General Information Sheet (GIS),[54] which is a document required to be submitted annually to the Securities and Exchange Commission,[55] foreigners hold 120,046,690 common shares of PLDT whereas Filipinos hold only 66,750,622 common shares.[56] In other words, foreigners hold 64.27% of the total number of PLDT's common shares, while Filipinos hold only 35.73%. Since holding a majority of the common shares equates to control, it is clear that foreigners exercise control over PLDT. Such amount of control unmistakably exceeds the allowable 40 percent limit on foreign ownership of public utilities expressly mandated in Section 11, Article XII of the Constitution.

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liquidation, dissolution, distribution of assets or winding up of the corporation, the holders of the Common Capital Stock shall be entitled to receive all the remaining assets of the corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of the Common Capital Stock held by them, respectively.

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4. The ownership of shares of Common Capital Stock shall not entitle the owner thereof to any right (other than such right, if any, as the Board of Directors in its discretion may from time to time grant) to subscribe for or to purchase or to have offered to him for subscription or purchase any shares of any class of preferred stock of the corporation.

[54] http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_%28as%20of_%207.2.10%29_final.pdf

[55] http://www.sec.gov.ph/index.htm?GIS_Download

[56] http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_%28as%20of_%207.2.10%29_final.pdf

Moreover, the Dividend Declarations of PLDT for 2009,[57] as submitted to the SEC, shows that per share the SIP[58] preferred shares earn a pittance in dividends compared to the common shares. PLDT declared dividends for the common shares at ₱70.00 per share, while the declared dividends for the preferred shares amounted to a measly ₱1.00 per share.[59] So the preferred shares not only cannot vote in the election of directors, they also have very little and obviously negligible dividend earning capacity compared to common shares.

As shown in PLDT's 2010 GIS,[60] as submitted to the SEC, the par value of PLDT common shares is ₱5.00 per share, whereas the par value of preferred shares is ₱10.00 per share. In other words, preferred shares have twice the par value of common shares but cannot elect directors and have only 1/70 of the dividends of common shares. Moreover, 99.44% of the preferred shares are owned by Filipinos while foreigners own only a minuscule 0.56% of the preferred shares.[61] Worse, preferred shares constitute 77.85% of the authorized capital stock of PLDT

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[57] http://www.pldt.com.ph/investor/Documents/2009%20Dividend%20Declarations_Update %2012082009.pdf. See also http://www.pldt.com.ph/investor/Documents/disclosures_03-01- 2011.pdf

[58] Subscription Investment Plan. See PD No. 217.

[59] This is the result of the preferred shares being denominated 10% preferred, which means each preferred share will earn an annual dividend equal to 10% of its par value of ₱10, which amounts to ₱1. Once this dividend is paid to holders of preferred shares, the rest of the retained earnings can be paid as dividends to the holders of common shares. See http://www.pldt.com.ph/investor/Documents/2009%20Dividend%20Declarations_Update %2012082009.pdf

In 2011, PLDT declared dividends for the common shares at ₱78.00 per share. (http://www.pldt.com.ph/investor/Documents/disclosures_03-01-2011.pdf)

[60] http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_(as%20of_%207.2.10)_final.pdf

[61] *Id.* Based on PLDT's 2010 GIS, the paid-up capital of PLDT (as of Record Date – 12 April 2010) consists of the following:

Filipino (preferred): 403,410,355
Foreigners (preferred): 2,287,207
Total: 405,697,562

while common shares constitute only 22.15%.[62] This undeniably shows that beneficial interest in PLDT is not with the non-voting preferred shares but with the common shares, blatantly violating the constitutional requirement of 60 percent Filipino control and Filipino beneficial ownership in a public utility.

The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipinos in accordance with the constitutional mandate. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is constitutionally required for the State's grant of authority to operate a public utility. The undisputed fact that the PLDT preferred shares, 99.44% owned by Filipinos, are non-voting and earn only 1/70 of the dividends that PLDT common shares earn, grossly violates the constitutional requirement of 60 percent Filipino control and Filipino beneficial ownership of a public utility.

In short, Filipinos hold less than 60 percent of the voting stock, and earn less than 60 percent of the dividends, of PLDT. This directly contravenes the express command in Section 11, Article XII of the Constitution that "[n]o franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to x x x corporations x x x organized under the laws of the Philippines, **at least sixty per centum of whose capital is owned by such citizens x x x.**"

To repeat, (1) foreigners own 64.27% of the common shares of PLDT, which class of shares exercises the **sole** right to vote in the election of directors, and thus exercise control over PLDT; (2) Filipinos own only 35.73% of PLDT's common shares, constituting a minority of the voting stock, and thus do not exercise control over PLDT; (3) preferred shares, 99.44% owned

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[62] Based on par value, as stated in PLDT's 2010 GIS sbumitted to the SEC. See http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_%28as%20of%207.2.10%29_final.pdf (accessed 23 May 2011).

Authorized capital stock of PLDT is broken down as follows:
Common shares: 234,000,000
Preferred shares: 822,500,000
Total: 1,056,000,000

by Filipinos, have no voting rights; (4) preferred shares earn only 1/70 of the dividends that common shares earn;[63] (5) preferred shares have twice the par value of common shares; and (6) preferred shares constitute 77.85% of the authorized capital stock of PLDT and common shares only 22.15%. This kind of ownership and control of a public utility is a mockery of the Constitution.

Incidentally, the fact that PLDT common shares with a par value of ₱5.00 have a current stock market value of ₱2,328.00 per share,[64] while PLDT preferred shares with a par value of ₱10.00 per share have a current stock market value ranging from only ₱10.92 to ₱11.06 per share,[65] is a glaring confirmation by the market that control and beneficial ownership of PLDT rest with the common shares, not with the preferred shares.

Indisputably, construing the term "capital" in Section 11, Article XII of the Constitution to include both voting and non-voting shares will result in the abject surrender of our telecommunications industry to foreigners, amounting to a clear abdication of the State's constitutional duty to limit control of public utilities to Filipino citizens. Such an interpretation certainly runs counter to the constitutional provision reserving certain areas of investment to Filipino citizens, such as the exploitation of natural resources as well as the ownership of land, educational institutions and advertising businesses. The Court should never open to foreign control what the Constitution has expressly reserved to Filipinos for that would be a betrayal of the Constitution and of the national interest. The Court must perform its solemn duty to defend and uphold the intent and letter of the Constitution to ensure, in the words of the Constitution, "a self-reliant and independent national economy *effectively controlled* by Filipinos."

Section 11, Article XII of the Constitution, like other provisions of the Constitution expressly reserving to Filipinos *specific* areas

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[63] For the year 2009.

[64] http://www.pse.com.ph/ (accessed 31 May 2011).

[65] http://www.pse.com.ph/html/Quotations/2011/stockQuotes_05272011.pdf\ (accessed 27 May 2011).

of investment, such as the development of natural resources and ownership of land, educational institutions and advertising business, is ***self-executing***. There is no need for legislation to implement these self-executing provisions of the Constitution. The rationale why these constitutional provisions are self-executing was explained in *Manila Prince Hotel v. GSIS*,[66] thus:

> x x x Hence, unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the constitution are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. That is why the prevailing view is, as it has always been, that —
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> > . . . in case of doubt, the Constitution should be considered self-executing rather than non-self-executing. . . . **Unless the contrary is clearly intended**, **the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective**. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute. (Emphasis supplied)

In *Manila Prince Hotel*, even the Dissenting Opinion of then Associate Justice Reynato S. Puno, later Chief Justice, agreed that constitutional provisions are presumed to be self-executing. Justice Puno stated:

> Courts as a rule consider the provisions of the Constitution as self-executing, rather than as requiring future legislation for their enforcement. The reason is not difficult to discern. **For if they are not treated as self-executing, the mandate of the fundamental law ratified by the sovereign people can be easily ignored and nullified by Congress. Suffused with wisdom of the ages is the unyielding rule that legislative actions may give breath to constitutional rights but congressional inaction should not suffocate them**.

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[66] 335 Phil. 82 (1997).

Thus, we have treated as self-executing the provisions in the Bill of Rights on arrests, searches and seizures, the rights of a person under custodial investigation, the rights of an accused, and the privilege against self-incrimination. It is recognized that legislation is unnecessary to enable courts to effectuate constitutional provisions guaranteeing the fundamental rights of life, liberty and the protection of property. The same treatment is accorded to constitutional provisions forbidding the taking or damaging of property for public use without just compensation. (Emphasis supplied)

Thus, in numerous cases,[67] this Court, even in the absence of implementing legislation, applied directly the provisions of the 1935, 1973 and 1987 Constitutions limiting land ownership to Filipinos. In *Soriano v. Ong Hoo*,[68] this Court ruled:

x x x As the Constitution is silent as to the effects or consequences of a sale by a citizen of his land to an alien, and as both the citizen and the alien have violated the law, none of them should have a recourse against the other, and it should only be the State that should be allowed to intervene and determine what is to be done with the property subject of the violation. We have said that what the State should do or could do in such matters is a matter of public policy, entirely beyond the scope of judicial authority. (*Dinglasan, et al. vs. Lee Bun Ting, et al.*, 6 G. R. No. L-5996, June 27, 1956.) **While the legislature has not definitely decided what policy should be followed in cases of violations against the constitutional prohibition, courts of justice cannot go beyond by declaring the disposition to be null and void as violative of the Constitution**. x x x (Emphasis supplied)

To treat Section 11, Article XII of the Constitution as not self-executing would mean that since the 1935 Constitution, or over the last 75 years, not one of the constitutional provisions expressly reserving specific areas of investments to corporations, at least 60 percent of the "capital" of which is owned by Filipinos, was enforceable. In short, the framers of the 1935, 1973 and 1987

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[67] *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947); *Rellosa v. Gaw Chee Hun*, 93 Phil. 827 (1953); *Vasquez v. Li Seng Giap*, 96 Phil. 447 (1955); *Soriano v. Ong Hoo*, 103 Phil. 829 (1958); *Philippine Banking Corporation v. Lui She*, 128 Phil. 53 (1967); *Frenzel v. Catito*, 453 Phil. 885 (2003).

[68] *Id*.

Constitutions miserably failed to effectively reserve to Filipinos specific areas of investment, like the operation by corporations of public utilities, the exploitation by corporations of mineral resources, the ownership by corporations of real estate, and the ownership of educational institutions. All the legislatures that convened since 1935 also miserably failed to enact legislations to implement these vital constitutional provisions that determine who will effectively control the national economy, Filipinos or foreigners. This Court cannot allow such an absurd interpretation of the Constitution.

This Court has held that the SEC "has both regulatory and adjudicative functions."[69] Under its regulatory functions, the SEC can be compelled by *mandamus* to perform its statutory duty when it unlawfully neglects to perform the same. Under its adjudicative or quasi-judicial functions, the SEC can be also be compelled by *mandamus* to hear and decide a possible violation

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[69] *Securities and Exchange Commission v. Court of Appeals, et al.*, 316 Phil. 903 (1995). The Court ruled in this case:

> The Securities and Exchange Commission ("SEC") **has both regulatory and adjudicative functions**.
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> **Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations**, partnerships and associations (excluding cooperatives, homeowners' associations, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.
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> Relative to its adjudicative authority, the SEC has original and exclusive jurisdiction to hear and decide controversies and cases involving —
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> a. Intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments;
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> **b. State and corporate affairs in relation to the legal existence of corporations, partnerships and associations or to their franchise; and**
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> c. Investors and corporate affairs particularly in respect of devices and schemes, such as fraudulent practices, employed by directors, officers, business associates, and/or other stockholders, partners, or members of registered firms; x x x
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> x x x x x x x x x
>
> (Emphasis supplied)

of any law it administers or enforces when it is mandated by law to investigate such violation.

Under Section 17(4)[70] of the Corporation Code, the SEC has the regulatory function to reject or disapprove the Articles of Incorporation of any corporation where **"the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution."** Thus, the SEC is the government agency tasked with the statutory duty to enforce the nationality requirement prescribed in Section 11, Article XII of the Constitution on the ownership of public utilities. This Court, in a petition for declaratory relief that is treated as a petition for *mandamus* as in the present case, can direct the SEC to perform its statutory duty under the law, a duty that the SEC has apparently unlawfully neglected to do based on the 2010 GIS that respondent PLDT submitted to the SEC.

Under Section 5(m) of the Securities Regulation Code,[71] the SEC is vested with the "power and function" to "**suspend or revoke, after proper notice and hearing, the franchise or**

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[70] SEC. 17. *Grounds when articles of incorporation or amendment may be rejected or disapproved*. — The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: Provided, **That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment**. The following are grounds for such rejection or disapproval:

x x x x x x x x x

(4) **That the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution**. (Emphasis supplied)

[71] Republic Act No. 8799. Section 5 of R.A. No. 8799 provides:

Section 5. *Powers and Functions of the Commission*. — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law." The SEC is mandated under Section 5(d) of the same Code with the "power and function" to "**investigate x x x the activities of persons to ensure compliance**" with the laws and regulations that SEC administers or enforces. The GIS that all corporations are required to submit to SEC annually should put the SEC on guard against violations of the nationality requirement prescribed in the Constitution and existing laws. This Court can compel the SEC, in a petition for declaratory relief that is treated as a petition for *mandamus* as in the present case, to hear and decide a possible violation of Section 11, Article XII of the Constitution in view of the ownership structure of PLDT's voting shares, as admitted by respondents and as stated in PLDT's 2010 GIS that PLDT submitted to SEC.

WHEREFORE, we *PARTLY GRANT* the petition and rule that the term "capital" in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in

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(a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or a permit issued by the Government;

x x x x x x x x x

(c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;

x x x x x x x x x

(f) Impose sanctions for the violation of laws and the rules, regulations and orders, issued pursuant thereto;

x x x x x x x x x

(i) Issue cease and desist orders to prevent fraud or injury to the investing public;

x x x x x x x x x

(m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnership or associations, upon any of the grounds provided by law; and

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is *DIRECTED* to apply this definition of the term "capital" in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law.

SO ORDERED.

Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Corona, C.J., joins the dissent of Mr. Justice Velasco.

Velasco, Jr., J., dissents. See Dissenting Opinion.

Abad, J., see dissenting opinion.

SEPARATE DISSENTING OPINION

VELASCO, JR., *J.*:

With due respect, I dissent.

A summary of the pertinent facts is as follows:

Philippine Long Distance Telephone Company (PLDT), a Philippine-registered telecommunications firm, was granted an initial 50-year charter and the right to establish a telephone network by Act No. 3436 on November 28, 1928.[1]

In 1969, American-owned General Telephone and Electronics Corporation (GTE), a major shareholder of PLDT, sold 26% of PLDT's equity to Philippine Telecommunications Investment Corporation (PTIC).[2] PTIC was incorporated on November 9, 1967 and is engaged in the business of investment holdings. It

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[1] *Rollo,* p. 16.

[2] *Id.*

held 26,034,263 of PLDT shares, or 13.847% of the total outstanding common stocks of PLDT.[3]

In 1977, Prime Holdings Inc. (PHI) was incorporated and 100% owned by the Conjuangco group. Subsequently, PHI became the owner of 111,415 shares or 46.125% of PTIC by virtue of three (3) Deeds of Assignment executed by Ramon Cojuangco and Luis Tirso Rivilla.[4]

On May 9, 1986, the 111,415 PTIC shares held by PHI were sequestered by the Presidential Commission on Good Government (PCGG) pursuant to Executive Order No. 1.[5] Later, this Court declared the said shares to be owned by the Republic of the Philippines.[6]

In 1999, First Pacific Company Limited (First Pacific), a Bermuda-registered, Hong Kong-based investment firm, acquired the remaining 54% equity of PTIC.[7]

Thereafter, the government decided to sell its 46.1% stake in PTIC (equivalent to 6.4% indirect stake in PLDT), designating the Privatization Council of the Philippine Government as the disposition entity. On December 8, 2006, a public bidding was held where Singapore-based Parallax Capital Management LP (Parallax) emerged as the highest bidder with an offer of PhP25,217,556,000.[8]

On January 31, 2007, the House of Representatives Committee on Good Government conducted a public hearing on the particulars of the impending sale. Finance Secretary Margarito Teves, Finance Undersecretary John Sevilla, PCGG Chairperson Camilo Sabio, Commissioners Narciso Nario and Nick Conti, Securities

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[3] *Id.* at 899.

[4] *Id.* at 900.

[5] *Id.*

[6] See *Cojuangco v. Sandiganbayan*, G.R. No. 183278, April 24, 2009, 586 SCRA 790.

[7] *Rollo*, p. 18.

[8] *Id.* at 900-901.

and Exchange Commission (SEC) General Counsel Vernette Umali-Paco, Philippine Stock Exchange (PSE) Chairperson Jose Vitug and President Francisco Ed Lim, Development Bank of the Philippines (DBP) President Reynaldo David and Director Miguel Romero all attended the hearing.[9]

In Report No. 2270, the House Committee on Good Government concluded that: (1) the auction of the government's PTIC shares bore due diligence, transparency and conformity with existing legal procedures; and (2) First Pacific's intended acquisition of the government's PTIC shares resulting in its 100% ownership in PTIC will not violate the 40% constitutional limit on foreign ownership of a public utility since PTIC held only 13.847% of the total outstanding common stocks of PLDT.[10]

Subsequently, the government informed First Pacific of the results of the bidding and gave it until February 1, 2007 to exercise its right of first refusal as provided under PTIC's Articles of Incorporation. Consequently, First Pacific announced that it would match Parallax's bid.[11] However, First Pacific failed to raise the money for the purchase by the February 1, 2007 deadline and, instead, yielded the right to PTIC itself. The deadline was then reset to March 2, 2007.[12]

On February 14, 2007, First Pacific, through its subsidiary, Metro Pacific Assets Holdings Inc. (MPAH), entered into a Conditional Sale and Purchase Agreement with the government for the latter's 46.1% stake in PTIC at the price of PhP 25,217,556,000.[13] The acquisition was completed on February 28, 2007.

On the same date, Wilson Gamboa (Gamboa) filed the instant petition for prohibition, injunction, declaratory relief and

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[9] *Id.* at 902.

[10] *Id.* at 902-903.

[11] *Id.* at 902.

[12] *Id.* at 17.

[13] *Id.* at 903.

declaration of nullity of sale of the 111,415 shares of PTIC. He argues that: (1) the consummation of the impending sale of 111,415 shares to First Pacific violates the constitutional limitation on foreign ownership of a public utility; (2) respondents committed grave abuse of discretion by allowing the sale of PTIC shares to First Pacific; (3) respondents have made a complete misrepresentation of the impending sale by saying that it does not breach the constitutional limitation on foreign ownership of a public utility; and (4) the sale of common shares to foreigners in excess of 40% of the entire subscribed common capital stock violates the 1987 Philippine Constitution.[14]

After a careful examination of the facts and law applicable to the case, I submit that the petition should be dismissed.

At the outset, it is strikingly clear that the petition suffers from several jurisdictional and procedural defects.

Petitioner Has No *Locus Standi*

Petitioner Gamboa claims that he filed the petition in his capacity as a "nominal shareholder of PLDT and as [a] taxpayer."[15] However, these claims do not clothe him with the requisite legal standing to bring this suit.

The Rules of Court specifically requires that "[e]very action must be prosecuted or defended in the name of the real party in interest."[16] A real party in interest is defined as the "party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit."

Petitioner has failed to allege any interest in the 111,415 PTIC shares nor in any of the previous purchase contracts he now seeks to annul. He is neither a shareholder of PTIC nor of First Pacific. Also, he has not alleged that he was an interested bidder in the government's auction sale of the PTIC shares. Finally, he has not shown how, as a nominal shareholder of

[14] *Id.* at 41.

[15] *Id.* at 15.

[16] Rule 3, Sec. 2.

PLDT, he stands to benefit from the annulment of the sale of the 111,415 PTIC shares or of any of the sales of the PLDT common shares held by foreigners. In fine, petitioner has not shown any real interest substantial enough to give him the requisite *locus standi* to question the sale of the government's PTIC shares to First Pacific.

Likewise, petitioner's assertion that he has standing to bring the suit as a "taxpayer" must fail. In *Gonzales v. Narvasa*, We discussed that "a taxpayer is deemed to have the standing to raise a constitutional issue when it is established that **public funds have been disbursed in alleged contravention of the law or the Constitution**."[17] In this case, no public funds have been disbursed. In fact, the opposite has happened—there is an inflow of funds into the government coffers.

Evidently, petitioner Gamboa has no legal standing to bring the present petition before this Court.

This Court Has No Jurisdiction

Petitioner Gamboa filed four (4) different petitions before this Court — declaratory relief, annulment, prohibition and injunction. However, all of these actions are not within the exclusive and/or original jurisdiction of the Supreme Court.

Article VII of the 1987 Constitution, particularly Section 5(1), in relation to Sec. 5(5), enumerates the instances where this Court exercises original jurisdiction:

> Article VIII
>
> Section 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.
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> x x x x x x x x x

[17] G.R. No. 140835, August 14, 2000, 337 SCRA 733, 741. (Emphasis supplied.)

(5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court.

Accordingly, this Court promulgated the Rules of Court, Sec. 1, Rule 56 of which states:

RULE 56
Original Cases

Section 1. Original cases cognizable. — Only petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, disciplinary proceedings against members of the judiciary and attorneys, and cases affecting ambassadors, other public ministers and consuls may be filed originally in the Supreme Court.

Based on the foregoing provisos, it is patently clear that petitions for declaratory relief, annulment of sale and injunction do not fall within the exclusive original jurisdiction of this Court.

First, the court with the proper jurisdiction for declaratory relief is the Regional Trial Court (RTC). Sec. 1, Rule 63 of the Rules of Court stresses that an action for declaratory relief is within the **exclusive** original jurisdiction of the RTC, *viz*:

Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, **bring an action in the appropriate Regional Trial Court** to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Emphasis supplied.)

An action for declaratory relief also requires the following: (1) a justiciable controversy between persons whose interests are adverse; (2) the party seeking the relief has a legal interest in

the controversy; and (3) the issue is ripe for judicial determination.[18] As previously discussed, petitioner lacks any real interest in this action; thus, no justiciable controversy between adverse interests exists.

Further, the Rules of Court also requires that "[a]ll persons who have or claim any interest which would be affected by the declaration shall be made parties."[19] The failure to implead all persons with a claim or interest in the subject matter of the petition for declaratory relief is a jurisdictional defect. [20]

What is more, an action for declaratory relief requires that it be filed before "the breach or violation of the statute, deed, contract, *etc*. to which it refers. Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action."[21] Here, petitioner himself points out the fact that, using the common stockholding basis, the 40% maximum foreign ownership limit on PLDT was already violated long before the sale of the PTIC shares by the government.[22] In addition, the sale itself has already been consummated. This only means that an action for declaratory relief is no longer proper.

Despite this, the *ponencia* decided to treat the petition for declaratory relief as one for *mandamus*, citing the rule that "where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for *mandamus*."[23] However, such rule is not absolute. In *Macasiano v. National Housing Authority*,[24] the Court explicitly stated

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[18] *Province of Camarines Sur v. Court of Appeals*, G.R. No. 175064, September 18, 2009, 600 SCRA 569, 585.

[19] Rule 63, Sec. 2.

[20] *Degala v. Reyes*, No. L-2402, November 29, 1950.

[21] *Tambunting, Jr. v. Sumabat*, G.R. No. 144101, September 16, 2005, 470 SCRA 92, 96.

[22] *Rollo*, pp. 11-12.

[23] *Ponencia*, p. 10.

[24] G.R. No. 107921, July 1, 1993, 224 SCRA 236, 243.

that the exercise of such discretion, whether to treat a petition for declaratory relief as one for *mandamus*, **presupposes that the petition is otherwise viable or meritorious**. As I shall discuss subsequently in the substantive portion of this opinion, the petition in this case is clearly not viable or meritorious.

Moreover, one of the reasons pointed out by the Court in *Macasiano* when it refused to treat the petition for declaratory relief as one for *mandamus* was that the petitioner lacked the proper standing to file the petition. Thus, the petition was subsequently dismissed. This is exactly similar to the instant case. As previously explained, petitioner has no legal standing to bring the present petition before this Court. He failed to show any real interest in the case substantial enough to give him the required legal standing to question the sale of the PTIC shares of the government to First Pacific.

Further, a petition for *mandamus* is premature if there are administrative remedies available to petitioner.[25] Under the doctrine of primary administrative jurisdiction, "courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact. In other words, if a case is such that its determination requires the expertise, specialized training and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction."[26] Along with this, the doctrine of exhaustion of administrative remedies also requires that where an administrative remedy is provided by statute relief must be sought by exhausting this remedy before the courts will act.[27]

In the instant case, the power and authority to determine compliance with the Constitution lies with the SEC. Under Section

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[25] *Perez v. City Mayor of Cabanatuan*, No. L-16786, October 31, 1961.

[26] *Ferrer, Jr. v. Roco, Jr.*, G.R. No. 174129, July 5, 2010.

[27] *Montes v. Civil Service Board of Appeals*, No. L-10759, May 20, 1957.

17(4) of the Corporation Code, the SEC has the power to approve or reject the Articles of Incorporation of any corporation where "the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution." Similarly, under Section 5 of the Securities Regulation Code, the SEC is conferred with the power to suspend or revoke the franchise or certificate of registration of corporations upon any of the grounds provided by law.[28] It bears stressing that the SEC also has the

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[28] Republic Act No. 8799, Sec. 5 provides:

Section 5. Powers and Functions of the Commission. — 5.1. The commission shall act with transparency and shall have the powers and functions provided by this code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

(a) Have jurisdiction and supervision over all corporations, partnership or associations who are the grantees of primary franchises and/or a license or a permit issued by the Government;

x x x x x x x x x

(c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;

(d) Regulate, investigate or supervise the activities of persons to ensure compliance;

x x x x x x x x x

(f) Impose sanctions for the violation of laws and rules, regulations and orders, and issued pursuant thereto;

(g) Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulation and orders;

x x x x x x x x x

(i) Issue cease and desist orders to prevent fraud or injury to the investing public;

x x x x x x x x x

(m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnership or associations, upon any of the grounds provided by law; and

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to

power to investigate violations of the Securities Regulation Code and its Amended Rules. With this, it is clear that petitioner failed to invoke the primary jurisdiction of the SEC with respect to this matter.

Additionally, the petition contains numerous questions of fact which is not allowed in a petition for *mandamus*.[29] Hence, based on the foregoing, a petition for *mandamus* is evidently improper.

Second, since an action for annulment of sale is an ordinary civil action incapable of pecuniary estimation,[30] it also falls within the exclusive original jurisdiction of the RTC.[31]

Lastly, although this Court, the CA, and the RTC have "concurrent jurisdiction to issue writs of *certiorari*, **prohibition**, *mandamus, quo warranto, habeas corpus* and **injunction**, such concurrence does not give the petitioner unrestricted freedom of choice of court forum."[32] The doctrine of hierarchy of courts dictates that when jurisdiction is shared concurrently with different courts, the proper suit should first be filed with the lower-ranking court. Failure to do so is sufficient cause for the dismissal of a petition.[33]

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the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

[29] *National Power Corporation v. Province of Quezon and Municipality of Pagbilao*, G.R. No. 171586, January 25, 2010.

[30] See *Heirs of Juanita Padilla v. Magdua*, G.R. No. 176858, September 15, 2010, 630 SCRA 573, 586.

[31] Batas Pambansa Blg. 129, Sec. 19. *Jurisdiction in civil cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

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[32] *Chong v. Dela Cruz*, G.R. No. 184948, July 21, 2009, 593 SCRA 311, 314; citing *Talento v. Escalada*, G.R. No. 180884, June 27, 2008, 556 SCRA 491.

[33] See *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform*, G.R. No. 183409, June 18, 2010, 621 SCRA 295.

In *Santiago v. Vasquez*,[34] the Court took the opportunity to explain why the blatant disregard of the hierarchy of courts is frowned upon, to wit:

> x x x We discern in the proceedings in this case a propensity on the part of petitioner, and, for that matter, the same may be said of a number of litigants who initiate recourses before us, to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court despite the fact that the same is available in the lower courts in the exercise of their original or concurrent jurisdiction, or is even mandated by law to be sought therein. This practice must be stopped, not only because of the imposition upon the precious time of this Court but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts. We, therefore, reiterate the judicial policy that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction.

In the instant case, petitioner should have filed the petition for injunction and prohibition with the trial courts. Petitioner failed to show any exceptional or compelling circumstance to justify the exception to the rule of hierarchy of courts. Thus, absent such justification, the rule must be upheld.

In fact, in *Fernandez v. Cojuangco*,[35] which also involved a similar issue, questioning the issuance of PLDT's common shares to Smart and NTT's stockholders on the ground, among others, that such issuance of shares violated the 40% foreign ownership constitutional restriction for public utilities, this Court issued a Resolution dismissing the petition filed with it for disregarding the hierarchy of courts.

More importantly, the function of a writ of prohibition is to prevent the performance of an act which is yet to be done. It is

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[34] G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651-652.

[35] G.R. No. 157360, June 9, 2003.

not intended to provide a remedy for acts already performed.[36] The rationale behind this was discussed in *Cabanero v. Torres*,[37] citing *U.S. v. Hoffman*,[38] *viz*:

> The writ of prohibition, as its name imports, is one which commands the person to whom it is directed not to do something which, by the suggested to the relator, the court is informed he is about to do. If the thing be already done, it is manifest the writ of prohibition cannot undo it, for that would require an affirmative act; and the only effect to a writ of prohibition is to suspend all action, and to prevent any further proceeding in the prohibited direction.

As previously pointed out, the sale by the government of the PTIC shares had already been completed. Thus, the Petition for Prohibition has become moot. As a result, this Court has no obligation to entertain the petition.

Finally, it should be noted that the non-joinder of ordinary civil actions with special civil actions is elementary in remedial law. Sec. 5, Rule 2 of the Rules specifically prohibits the joining of special civil actions or actions governed by special rules with ordinary civil actions.[39] In this case, petitioner violated this basic rule when he joined several special civil actions, prohibition and declaratory relief, and the ordinary civil actions for annulment and injunction.

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[36] *Pimentel v. Ermita*, G.R. No. 164978, October 13, 2005, 472 SCRA 587, 593; *Tolentino v. Commission on Elections*, G.R. No. 148334, January 21, 2004, 420 SCRA 438, 451.

[37] 61 Phil. 523 (1935).

[38] 4 Wall., 158, 161; 18 Law. ed., 354.

[39] Rule 2, Sec. 5. *Joinder of causes of action.*

A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:

x x x x x x x x x

(b) **The joinder shall not include special civil actions or actions governed by special rules;** (Emphasis supplied.)

Violation of Due Process

It is a fundamental guarantee in the Constitution that "[n]o person shall be deprived of life, liberty or property without due process of law."[40] Due process has two aspects: substantive and procedural. Substantive due process is a prohibition of arbitrary laws, while procedural due process is a guarantee of procedural fairness.[41] Here, what petitioner asks of this Court is a finding of a violation of both substantive and procedural due process.

Sec. 11, Art. XII of the Constitution contemplates of two situations: *first*, where the applicant of a franchise is a natural person, he must be a Filipino citizen; and *second*, where the applicant is a juridical person, 60% of its **capital** must be owned by Filipino citizens. In the first scenario, only one person and one property is involved, *i.e.*, the Filipino citizen and his or her franchise. In the second, two different property holders and two different properties are involved, *i.e.*, the public utility company holding its franchise and the shareholders owning the capital of the utility company. However, in both situations, Sec. 11 imposes a qualification for the retention of property on just one property holder, the franchise holder, as a condition for keeping his or its franchise. It imposes no nationality qualification on the shareholders of the utility company as a condition for keeping their shares in the utility company. Thus, if a utility company or the franchise holder fails to maintain the nationality qualification, only its franchise should be revoked.

In *J.G. Summit Holdings, Inc. v. CA*,[42] this Court had the chance to rule on a similar set of facts. In that case, We refused to annul the sale of the government's shares despite the petitioner's claim that it would breach the maximum 40% foreign ownership limit found in the Constitution. According to the Court:

x x x **In fact, it can even be said that if the foreign shareholdings of a landholding corporation exceeds 40%, it is not the foreign**

[40] Art. III, Sec. 1.

[41] J.G. Bernas, S.J., *THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER* 27-28 (2006).

[42] G.R. No. 124293, January 31, 2005, 450 SCRA 169, 192.

stockholders' ownership of the shares which is adversely affected but the capacity of the corporation to own land — that is, the corporation becomes disqualified to own land. This finds support under the basic corporate law principle that the corporation and its stockholders are separate juridical entities. In this vein, the right of first refusal over shares pertains to the shareholders whereas the capacity to own land pertains to the corporation. Hence, the fact that PHILSECO owns land cannot deprive stockholders of their right of first refusal. **No law disqualifies a person from purchasing shares in a landholding corporation even if the latter will exceed the allowed foreign equity, what the law disqualifies is the corporation from owning land.** (Emphasis supplied.)

Certainly, the Court has differentiated the two property owners and their properties. Confusing the two would result in "an unreasonable curtailment of property rights without due process of law."[43]

Furthermore, procedural due process requires that before any of the common shares in excess of the 40% maximum foreign ownership limit can be taken, all the shareholders have to be given notice and a trial should be held before their shares are taken. This means that petitioner should have impleaded all the foreign natural and juridical shareholders of PLDT so that they can be heard. The foreign shareholders are considered as an "indispensable party" or one who:

has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest[;] a party who has not only an interest in the subject matter of the controversy, but also has an interest of such nature that a final decree cannot be made without affecting his interest or leaving the controversy in such a condition that its final determination may be wholly inconsistent with equity and good conscience. It has also been considered that an indispensable party is a person in whose absence there cannot be a determination between the parties already before the court which is effective, complete, or

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[43] *La Bugal-B'laan Tribal Association Inc. v. DENR*, G.R. No. 127882, December 1, 2004, 445 SCRA 1.

equitable. Further, an indispensable party is one who must be included in an action before it may properly go forward.[44]

At the same time, the Rules of Court explicitly requires the joinder of indispensable parties or "[p]arties in interest without whom no final determination can be had."[45] This is mandatory. As held in *Pepsico, Inc. v. Emerald Pizza, Inc.*,[46] their absence renders all actions of the court null and void, *viz*:

> x x x Their presence is necessary to vest the court with jurisdiction, which is "the authority to hear and determine a cause, the right to act in a case." Thus, without their presence to a suit or proceeding, judgment of a court cannot attain real finality. **The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.** (Emphasis supplied.)

In this case, petitioner failed to implead all the indispensable parties. Accordingly, in the absence of such indispensable parties, this Court is wanting in authority to act or rule on the present petition.

Ultimately, the present petition partakes of a collateral attack on PLDT's franchise as a public utility with petitioner pleading as ground PLDT's alleged breach of the 40% limit on foreign equity. Such is not allowed. As discussed in *PLDT v. National Telecommunications Commission*,[47] a franchise is a property right that can only be questioned in a direct proceeding:

> x x x A franchise is a property right and cannot be revoked or forfeited without due process of law. The determination of the right to the exercise of a franchise, or whether the right to enjoy such privilege has been forfeited by non-user, is more properly the subject of the prerogative writ of *quo warranto*, the right to assert which,

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[44] *Metropolitan Bank & Trust Company v. Alejo*, G.R. No. 141970, September 10, 2001, 364 SCRA 812, 820; citations omitted.

[45] Rule 3, Sec. 7.

[46] G.R. No. 153059, August 14, 2007, 530 SCRA 58.

[47] G.R. No. 84404, October 18, 1990, 190 SCRA 717, 729.

as a rule, belongs to the State "upon complaint or otherwise" x x x the reason being that the abuse of a franchise is a public wrong and not a private injury. A forfeiture of a franchise will have to be declared in a direct proceeding for the purpose brought by the State because a franchise is granted by law and its unlawful exercise is primarily a concern of Government.

Hence, due process requires that for the revocation of franchise a petition for *quo warranto* be filed directly attacking the franchise itself.

Evidently, the petition is patently flawed and the petitioner availed himself of the wrong remedies. These jurisdictional and procedural grounds, by themselves, are ample enough to warrant the dismissal of the petition. Granting *arguendo* that the petition is sufficient in substance and form, it will still suffer the same fate.

The Proper Definition of "Capital"

Petitioner's main substantive issue revolves around the proper definition of the word "capital" found in Section 11, Article 12 of the Constitution. The said section reads:

Section 11. **No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years.** Neither shall any such franchise or right be granted except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the common good so requires. The State shall encourage equity participation in public utilities by the general public. **The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital, and all the executive and managing officers of such corporation or association must be citizens of the Philippines**. (Emphasis supplied.)

He argues that the framers of the Constitution intended the word "capital" to be limited to voting shares alone and not the total

outstanding capital stock (combined total of voting and non-voting shares). Specifically, he contends that the term "capital" refers only to shares of stock that can vote in the election of the members of the Board of Directors. The question is, is this the proper definition?

The *ponencia* resolved this in the affirmative and held that the term "capital" only refers to voting shares since these are the shares that "have voting rights which translate to control,"[48] *i.e.*, the right to elect directors who ultimately control or manage the corporation. Generally, these are referred to as "common" shares. However, he clarified that if preferred shares also have the right to vote in the election of the members of the Board of Directors, then the term "capital" shall also include such preferred shares. Further, the *ponencia* maintains that "mere legal title is insufficient to meet the required Filipino equity," but that "full beneficial ownership of the stocks coupled with appropriate voting rights" is required.[49]

I beg to disagree with the *ponencia's* resolution of this issue for the following reasons:

First, contrary to pronouncement of the *ponencia*, the intent of the framers of the Constitution was not to limit the application of the word "capital" to voting or common shares alone. In fact, the Records of the Constitutional Commission reveal that even though the UP Law Center proposed the phrase "voting stock or controlling interest," the framers of the Constitution did not adopt this but instead used the word "capital," *viz*:

> MR. BENGZON. We would also like to indicate that perhaps the better term in order to avoid any conflict or misinterpretations would be the use of the phrase "capital stock."
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> MR. NATIVIDAD. Capital stock?
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> MR. SUAREZ. We will discuss that on the committee level because precisely, there were three criteria that were submitted. One of them is with reference to the authorized capital stock; the second would

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[48] *Ponencia*, p. 17.

[49] *Id.* at 20.

be with respect to the voting rights; and the third would be with respect to the management. And so, again, we would like to inform the members that the Committee is still trying to polish this particular provision.[50]

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MR. FOZ. Mr. Vice-President, in Sections 3 and 9,[51] the provision on equity is both 60 percent, but I notice that this is now different from the provision in the 1973 Constitution in that the basis for the equity provision is voting stock or controlling interest instead of the usual capital percentage as provided for in the 1973 Constitution. We would like to know what the difference would be between the previous and the proposed provisions regarding equity interest.

MR. VILLEGAS. Commissioner Suarez will answer that.

MR. SUAREZ. Thank you.

As a matter of fact, this particular portion is still being reviewed by this Committee. In Section 1, Article XIII of the 1935 Constitution, the wording is that the percentage should be based on the capital which is owned by such citizens. In the proposed draft, this phrase was proposed: "voting stock or controlling interest." This was a plan submitted by the UP Law Center.

Three days ago, we had an early morning breakfast conference with the members of the UP Law Center and precisely, we were seeking clarification regarding the difference. We would have three criteria to go by: One would be based on capital, which is capital stock of the corporation, authorized, subscribed or paid up, as employed under the 1935 and the 1973 Constitution. The idea behind the introduction of the phrase "voting stock or controlling interest" was precisely to avoid the perpetration of dummies, Filipino dummies of multinationals. It is theoretically possible that a situation may develop where these multinational interests would not really be only 40 percent but will extend beyond that in the matter of voting because they could enter into what is known as a voting trust or voting agreement with the rest of the stockholders and, therefore, notwithstanding the fact that on record their capital extent is only up to 40-percent interest in the corporation, actually, they would be

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[50] Records of the Constitutional Commission, Volume III, p. 269.

[51] Referring to Sections 2 and 10, Article XII of the 1987 Constitution.

managing and controlling the entire company. That is why the UP Law Center members suggested that we utilize the words "voting interest" which would preclude multinational control in the matter of voting, independent of the capital structure of the corporation. And then they also added the phrase "controlling interest" which up to now they have not been able to successfully define the exact meaning of. x x x And as far as I am concerned, I am not speaking in behalf of the Committee, I would feel more comfortable if we go back to the wording of the 1935 and the 1973 Constitution, that is to say, the 60-40 percentage could be based on the capital stock of the corporation.

MR. FOZ. I understand that that was the same view of Dean Carale who does not agree with the other on this panel at the UP Law Center regarding the percentage of the ratio.

MR. Suarez. That is right. Dean Carale shares my sentiment about this matter.

MR. BENGZON. I also share the sentiment of Commissioner Suarez in that respect. So there are already two in the Committee who want to go back to the wording of the 1935 and the 1973 Constitution.[52]

x x x x x x x x x

MR. TREÑAS. Madam President, may I propose an amendment on line 14 of Section 3 by deleting therefrom "whose voting stock and controlling interest." And in lieu thereof, insert the CAPITAL so the line should read: "associations at least sixty percent of the CAPITAL is owned by such citizens.

MR. VILLEGAS. We accept the amendment.

MR. TREÑAS. Thank you.

THE PRESIDENT. The amendment of Commissioner Treñas on line 14 has been accepted by the Committee.

Is there any objection? (*Silence*) The Chair hears none; the amendment is approved.[53]

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[52] Records of the Constitutional Commission, Volume III, pp. 326-327.

[53] *Id.* at 357.

x x x x x x x x x

MR. VILLEGAS. Yes, Commissioner Davide has accepted the word "CAPITAL" in place of "voting stock or controlling interest." This is an amendment already accepted by the Committee.[54] **x x x**

x x x x x x x x x

MR. NOLLEDO. Thank you, Madam President.

I would like to propound some questions to the chairman and members of the committee. I have here a copy of the approved provisions on Article on the National Economy and Patrimony. On page 2, the first two lines are with respect to the Filipino and foreign equity and I said: "At least sixty percent of whose capital or controlling interest is owned by such citizen."

I notice that this provision was amended by Commissioner Davide by changing "voting stocks" to "CAPITAL," but I still notice that there appears the term "controlling interest" which seems to refer to associations other than corporations and it is merely 50 percent plus one percent which is less than 60 percent. Besides, the wordings may indicate that the 60 percent may be based not only on capital but also on controlling interest; it could mean 60 percent or 51 percent.

Before I propound the final question, I would like to make a comment in relation to Section 15 since they are related to each other. I notice that in Section 15, there still appears the phrase "voting stock or controlling interest." The term "voting stocks" as the basis of the Filipino equity means that if 60 percent of the voting stocks belong to Filipinos, foreigners may not own more than 40 percent of the capital as long as the 40 percent or the excess thereof will cover nonvoting stock. This is aside from the fact that under the Corporation Code, even nonvoting shares can vote on certain instances. Control over investments may cover aspects of management and participation in the fruits of production or exploitation.

So, I hope the committee will consider favorably my recommendation that instead of using "controlling interests," we just use "CAPITAL" uniformly in cases where foreign equity is permitted by law, because the purpose is really to help the Filipinos

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[54] *Id.* at 360.

in the exploitation of natural resources and in the operation of public utilities. I know the committee, at its own instance, can make the amendment.

What does the committee say?

MR. VILLEGAS. We completely agree with the Commissioner's views. Actually, it was really an oversight. We did decide on the word "CAPITAL." I think it was the opinion of the majority that the phrase "controlling interest" is ambiguous.

So, we do accept the Commissioner's proposal to eliminate the phrase "or controlling interest" in all the provisions that talk about foreign participation. (Emphasis supplied.)

MR. NOLLEDO. Not only in Section 3, but also with respect to Section 15.

Thank you very much.[55]

Undoubtedly, the framers of the Constitution decided to use the word "capital" in all provisions that talk about foreign participation and **intentionally** left out the phrase "voting stocks" or "controlling interest." *Cassus Omissus Pro Omisso Habendus Est* — a person, object or thing omitted must have been omitted intentionally. In this case, the intention of the framers of the Constitution is very clear — to omit the phrases "voting stock" and "controlling interest."

Evidently, the framers of the Constitution were more comfortable with going back to the wording of the 1935 and 1973 Constitutions, which is to use the 60-40 percentage for the basis of the capital stock of the corporation. Additionally, the phrases "voting stock or controlling interest" were also initially used in Secs. 2[56]

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[55] *Id.* at 582.

[56] Section 2, Article XII, 1987 Constitution:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The

and 10,[57] Article XII of the 1987 Constitution. These provisions involve the development of natural resources and certain investments. However, after much debate, they were also replaced with the word "capital" alone. All of these were very evident in the aforementioned deliberations.

Much more significant is the fact that a comprehensive examination of the constitutional deliberations in their entirety will reveal that the framers of the Constitution themselves understood that the word capital includes both voting and non-voting shares and still decided to use "capital" alone, to wit:

MR. AZCUNA. May I be clarified as to that portion that was accepted by the Committee.

MR. VILLEGAS. The portion accepted by the Committee is the deletion of the phrase "voting stock or controlling interest."

MR. AZCUNA. Hence, without the Davide amendment, the committee report would read: "corporations or associations at least sixty percent of whose CAPITAL is owned by such citizens."

MR. VILLEGAS. Yes.

MR. AZCUNA. So if the Davide amendment is lost, we are stuck with 60 percent of the capital to be owned by citizens?

MR. VILLEGAS. That is right.

x x x x x x x x x

State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, **or corporations or associations at least sixty per centum of whose capital is owned by such citizens**. x x x (Emphasis supplied.)

[57] Section 10, Article XII, 1987 Constitution:

Section 10. The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or **to corporations or associations at least sixty per centum of whose capital is owned by such citizens**, or such higher percentage as Congress may prescribe, certain areas of investments. The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos. (Emphasis supplied.)

MR. AZCUNA. Yes, but what I mean is that the control should be with the Filipinos.

MR. BENGZON. Yes, that is understood.

MR. AZCUNA. Yes, because if we just say "sixty percent of whose capital is owned by the Filipinos," the capital may be voting or non-voting.

MR. BENGZON. That is correct.[58]

x x x x x x x x x

MR. GARCIA. Thank you very much, Madam President.

I would like to propose the following amendment on Section 3, line 14 on page 2. I propose to change the word "sixty" to SEVENTY-FIVE. So, this will read: "or it may enter into co-production, joint venture, production sharing agreements with Filipino citizens or corporations or associations at least SEVENTY-FIVE percent of whose CAPITAL stock or controlling interest is owned by such citizens."

MR. VILLEGAS. This is just a correction. I think Commissioner Azcuna is not insisting on the retention of the phrase "controlling interest," so we will retain "CAPITAL" to go back really to the 1935 and 1973 formulations.[59] (Emphasis supplied.)

To emphasize, by using the word "capital," the framers of the Constitution adopted the definition or interpretation that includes **all** types of shares, whether voting or non-voting.

The fundamental principle in the construction of constitutional provisions is "to give the intent to the framers of the organic law and the people adopting it. The intention to which force is to be given is that which is embodied and expressed in the constitutional provisions themselves."[60] Generally, "in construing constitutional provisions which are ambiguous or of doubtful

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[58] Records of the Constitutional Commission, Volume III, p. 360.

[59] *Id.* at 364.

[60] *Sarmiento v. Mison*, G.R. No. 79974, December 17, 1987, 156 SCRA 549, 552 citing *Gold Creek Mining Corp. v. Rodriguez*, 66 Phil. 259, 264.

meaning, the courts may consider the debates in the constitutional convention as throwing light on the intent of the framers of the Constitution. It is true that the intent of the convention is not controlling by itself, but as its proceeding was preliminary to the adoption by the people of the Constitution the understanding of the convention as to what was meant by the terms of the constitutional provision which was the subject of the deliberation, goes a long way toward explaining the understanding of the people when they ratified it."[61]

Second, the *ponencia* also points to the provisions of the Foreign Investments Act of 1991 (FIA),[62] as a reinforcement of the interpretation of the word "capital" as only referring to those shares entitled to vote. However, a careful examination of its provisions would reveal otherwise.

Section 3(a) of the FIA, as amended, defines the term "Philippine national" as:

SEC. 3. Definitions. — As used in this Act:

a. The term "Philippine national" shall mean a citizen of the Philippines; of a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which **at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines**; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%)

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[61] *Aquino, Jr. v. Enrile*, No. L-35546, September 17, 1974, 59 SCRA 183.

[62] Republic Act No. 7042 entitled "AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES AND FOR OTHER PURPOSES."

of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation, shall be considered a "Philippine national." (Emphasis supplied.)

The *ponencia* failed to see the fact that the FIA specifically has the phrase "entitled to vote" after the phrase "total outstanding capital stock." Logically, this means that interpreting the phrase "total outstanding capital stock" **alone** connotes the inclusion of all types of shares under the term "capital" and not just those that are entitled to vote. By adding the phrase "entitled to vote," the FIA sought to distinguish between the shares that can vote and those that cannot. Thus, it is very clear that even the FIA itself supports the definition of the term "capital" as including all types of shares.

As a matter of fact, in the Senate deliberations of the FIA, Senator Angara pointed out that the word "capital," as used in the 1987 Constitution, includes all types of shares:

Senator Angara. x x x

Before I leave that point, Mr. President, as we know, **the constitutional test is capital. That means, equity investment, not control**. Would this control test then now become an additional requirement to the constitutional requirement?

Senator Paterno. Well, this is an amplification of the constitutional stipulation, Mr. President. It is a definition, by law, of what is contained in the Constitution.

Senator Angara. No, Mr. President, **because the Constitution requires 60 percent of capital. That means, whether voting or nonvoting, 60 percent of that must belong to Filipinos.** Whereas, under this proposed definition, it is only the voting shares that we require to be 60 percent owned.

Senator Paterno. Yes.

Senator Angara. So, my question is: Would this requirement of control be in addition to what the Constitution imposes?

Senator Paterno. No, this would be the definition of what the Constitution requires. We are saying that it is the capital stock outstanding and entitled to vote. It is the definition of capital as maintained by the Constitution.

Senator Angara. On the contrary, I am saying that **the constitutional test is capital, which is distinguished from capital stock entitled to vote. Capital means equity which can be voting or nonvoting, common or preferred. That is the constitutional test**.[63] x x x (Emphasis supplied.)

Moreover, it is a well-settled rule of statutory construction that a statute should be construed whenever possible in a manner that will avoid conflict with the Constitution.[64] Where a statute is reasonably susceptible of two constructions, one constitutional and the other unconstitutional, the construction in favor of its constitutionality should be adopted.

In this case, the FIA should be read in harmony with the Constitution. Since the Constitution only provides for a single requirement for the operation of a public utility under Sec. 11, *i.e.*, 60% capital must be Filipino-owned, a mere statute cannot add another requirement. Otherwise, such statute may be considered unconstitutional.

Accordingly, the phrase "entitled to vote" should not be interpreted to be limited to common shares alone or those shares entitled to vote in the election of members of the Board of Directors. It should also include those deemed non-voting because they also have voting rights. Sec. 6 of the Corporation Code[65] grants voting rights to holders of shares of a corporation on certain key fundamental corporate matters despite being classified as non-voting in the articles of incorporation. These are:

1. Amendment of the articles of incorporation;

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[63] Transcript of the January 15, 1991, 4th Regular Session, 8th CRP, Bill on Second Reading, Senate, pp. 11-12.

[64] *Teehankee v. Rovias*, 75 Phil. 634 (1945).

[65] *Batas Pambansa Blg.* 68 entitled "THE CORPORATION CODE OF THE PHILIPPINES."

2. Adoption and amendment of by-laws;

3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;

4. Incurring, creating or increasing bonded indebtedness;

5. Increase or decrease of capital stock;

6. Merger or consolidation of the corporation with another corporation or other corporations;

7. Investment of corporate funds in another corporation or business in accordance with this Code; and

8. Dissolution of the corporation.

Clearly, the shares classified as non-voting are also entitled to vote under these circumstances.

In fact, the FIA did not say "entitled to vote in the management affairs of the corporation" or "entitled to vote in the election of the members of the Board of Directors." Verily, where the law does not distinguish, neither should We. Hence, the proper interpretation of the phrase "entitled to vote" under the FIA should be that it applies to all shares, whether classified as voting or non-voting shares. Such construction is in fact in harmony with the fundamental law of the land.

Stockholders, whether holding voting or non-voting stocks, have all the rights, powers and privileges of ownership over their stocks. This necessarily includes the right to vote because such is inherent in and incidental to the ownership of corporate stocks, and as such is a property right.[66]

Additionally, **control is another inherent right of ownership**.[67] The circumstances enumerated in Sec. 6 of the Corporation Code clearly evince this. It gives voting rights to the stocks deemed as non-voting as to ***fundamental* and *major* corporate changes**. Thus, the issue should not only dwell on the daily management

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[66] *Castillo v. Balinghasay*, G.R. No. 150976, October 18, 2004.

[67] *National Waterworks and Sewerage Authority*, No. L-21911, September 29, 1967.

affairs of the corporation but also on the equally important fundamental changes that may need to be voted on. On this, the "non-voting" shares also exercise control, together with the voting shares.

Consequently, the fact that only holders of common shares can elect a corporation's board of directors does not mean that only such holders exercise control over the corporation. Particularly, the control exercised by the board of directors over the corporation, by virtue of the corporate entity doctrine, is totally distinct from the corporation's stockholders and any power stockholders have over the corporation as owners.

It is settled that when the activity or business of a corporation falls within any of the partly nationalized provisions of the Constitution or a special law, the "control test" must also be applied to determine the nationality of a corporation on the basis of the nationality of the stockholders who control its equity.

The control test was laid down by the Department of Justice (DOJ) in its Opinion No. 18 dated January 19, 1989. It determines the nationality of a corporation with alien equity based on the percentage of capital owned by Filipino citizens. It reads:

> Shares belonging to corporations or partnerships at least 60% of the capital of which is owned by Filipino citizens shall be considered as Philippine nationality, but if the percentage of Filipino ownership in the corporation or partnership is less than 60% only the number of shares corresponding to such percentage shall be counted as of Philippine nationality.[68]

In a catena of opinions, the SEC, "the government agency tasked with the statutory duty to enforce the nationality requirement prescribed in Section 11, Article XII of the Constitution on the ownership of public utilities,"[69] has consistently applied the control test.[70]

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[68] Opinion No. 018, s. 1989, January 19, 1989, Department of Justice.

[69] *Ponencia*, pp. 30-31.

[70] SEC Opinion dated November 6, 1989 addressed to Attys. Barbara Anne C. Migollos and Peter Dunnely A. Barot; SEC Opinion dated December

The FIA likewise adheres to the control test. This intent is evident in the May 21, 1991 deliberations of the Bicameral Conference Committee (Committees on Economic Affairs of the Senate and House of Representatives), to wit:

CHAIRMAN TEVES. x x x On definition of terms, Ronnie, would you like anything to say here on the definition of terms of Philippine national?

HON. RONALDO B. ZAMORA. I think we've — we have already agreed that we are adopting here the control test. Wasn't that the result of the —

CHAIRMAN PATERNO. No. I thought that at the last meeting, I have made it clear that the Senate was not able to make a decision for or against the grandfather rule and the control test, because we had gone into caucus and we had voted but later on the agreement was rebutted and so we had to go back to adopting the wording in the present law which is not clearly, by its language, a control test formulation.

HON. ANGARA. Well, I don't know. Maybe I was absent, Ting, when that happened but my recollection is that we went into caucus,

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14, 1989 addressed to Atty. Maurice C. Nubla; SEC Opinion dated January 2, 1990 addressed to Atty. Eduardo F. Hernandez; SEC Opinion dated May 30, 1990 addressed to Gold Fields Philippines Corporation; SEC Opinion dated September 21, 1990 addressed to Carag, Caballes, Jamora, Rodriguez & Somera Law Offices; SEC Opinion dated March 23, 1993 addressed to Mr. Francis F. How; SEC Opinion dated April 14, 1993 addressed to Director Angeles T. Wong of the Philippine Overseas Employment Administration; SEC Opinion dated November 23, 1993 addressed to Mssrs. Dominador Almeda and Renato S. Calma; SEC Opinion dated December 7, 1993 addressed to Roco Bunag Kapunan Migallos & Jardaleza; SEC Opinion No. 49-04 dated December 22, 2004 addressed to Atty. Priscilla B. Valer; SEC Opinion No. 17-07 dated September 27, 2007 addressed to Mr. Reynaldo G. David; SEC Opinion No. 18-07 dated November 28, 2007 addressed to Mr. Rafael C. Bueno, Jr.; SEC-OGC Opinion No. 20-07 dated November 28, 2007 addressed to Atty. Amado M. Santiago, Jr., SEC-OGC Opinion No. 21-07 dated November 28, 2007 addressed to Atty. Navato Jr.; SEC-OGC Opinion No. 03-08 dated January 15, 2008 addressed to Attys. Ruby Rose J. Yusi and Rudyard S. Arbolado; SEC-OGC Opinion No. 09-09 dated April 28, 2009 addressed to Villaraza Cruz Marcelo Angangco; SEC-OGC Opinion No. 08-10 dated February 8, 2010 addressed to Mr. Teodoro B. Quijano; SEC-OGC Opinion No. 23-10 dated August 18, 2010 addressed to Attys. Teodulo G. San Juan, Jr. and Erdelyn C. Go.

we debated [the] pros and cons of the control versus the grandfather rule and by actual vote the control test bloc won. I don't know when subsequent rejection took place, but anyway even if the — we are adopting the present language of the law I think by interpretation, administrative interpretation, while there may be some differences at the beginning, the current interpretation of this is the control test. It amounts to the control test.

CHAIRMAN TEVES. That's what I understood, that we could manifest our decision on the control test formula even if we adopt the wordings here by the Senate version.

x x x x x x x x x

CHAIRMAN PATERNO. The most we can do is to say that we have explained — is to say that although the House Panel wanted to adopt language which would make clear that the control test is the guiding philosophy in the definition of [a] Philippine national, we explained to them the situation in the Senate and said that we would be — was asked them to adopt the present wording of the law cognizant of the fact that the present administrative interpretation is the control test interpretation. But, you know, we cannot go beyond that.[71]

MR. AZCUNA. May I be clarified as to that portion that was accepted by the Committee.

MR. VILLEGAS. The portion accepted by the Committee is the deletion of the phrase "voting stock or controlling interest."

This intent is even more apparent in the Implementing Rules and Regulations (IRR) of the FIA. In defining a "Philippine national," **Section 1(b) of the IRR of the FIA categorically states that for the purposes of determining the nationality of a corporation the control test should be applied**.[72]

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[71] Deliberations of the Bicameral Conference Committee, May 21, 1991, pp. 3-5.

[72] Section 1(b), Implementing Rules and Regulations of the Foreign Investments Act of 1991:

b. "Philippine national" shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent [60%] of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a trustee of funds for pension

The cardinal rule in the interpretation of laws is to ascertain and give effect to the intention of the legislator.[73] Therefore, the legislative intent to apply the control test in the determination of nationality must be given effect.

Significantly, **in applying the control test, the SEC has consistently ruled that the determination of the nationality of the corporation must be based on the *entire outstanding capital stock*, which includes both voting and non-voting shares.** One such ruling can be found in an Opinion dated November 21, 1989 addressed to Atty. Reynaldo G. Geronimo, to wit:

> As to the basis of computation of the 60-40 percentage nationality requirement under existing laws (whether it should be based on the number of shares or the aggregate amount in pesos of the par value of the shares), the following definitions of corporate terms are worth mentioning.
>
> "The term capital stock signifies the aggregate of the shares actually subscribed." (11 Fletcher, Cyc. Corps. (1971 Rev. Vol.) Sec. 5082, citing *Goodnow v. American Writing Paper Co.*, 73 NJ Eq. 692, 69 A 1014 aff'g 72 NJ Eq. 645, 66 A, 607).
>
> "Capital stock means the capital subscribed (the share capital)." (*Ibid.*, emphasis supplied).
>
> "In its primary sense a share of stock is simply one of the proportionate integers or units, the sum of which constitutes the capital stock of corporation. (Fletcher, Sec. 5083).

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or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent [60%] of the fund will accrue to the benefit of the Philippine nationals; Provided, that where a corporation its non-Filipino stockholders own stocks in a Securities and Exchange Commission [SEC] registered enterprise, at least sixty percent [60%] of the capital stock outstanding and entitled to vote of both corporations must be owned and held by citizens of the Philippines and at least sixty percent [60%] of the members of the Board of Directors of each of both corporation must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national. **The control test shall be applied for this purpose.** (Emphasis supplied.)

[73] *Roldan v. Villaroman*, No. L-46825, October 18, 1939.

The equitable interest of the shareholder in the property of the corporation is represented by the term stock, and the extent of his interest is described by the term shares. The expression shares of stock when qualified by words indicating number and ownership expresses the extent of the owner's interest in the corporate property (*Ibid.*, Sec. 5083, emphasis supplied).

Likewise, in all provisions of the Corporation Code the stockholders' right to vote and receive dividends is always determined and based on the "outstanding capital stock," defined as follows:

"SECTION 137. Outstanding capital stock defined. — The term "outstanding capital stock" as used in this Code, means the total shares of stock issued to subscribers or stockholders, whether or not fully or partially paid (as long as there is a binding subscription agreement, except treasury shares."

The computation, therefore, should be based on the total outstanding capital stock, irrespective of the amount of the par value of the shares.

Again in SEC Opinion dated December 22, 2004 addressed to Atty. Priscilla B. Valer, the SEC reiterated the application of the control test to the total outstanding capital stock irrespective of the amount of the par value of shares, *viz*:

"Under the 'control concept,' the nationality of the corporation depends on the nationality of the controlling stockholders. In determining the nationality of a corporation under the 'control test,' the following ruling was adopted by the Commission:

x x x x x x x x x

Hence, we confirm your view that the test for compliance with the nationality requirement is based on the total outstanding capital stock irrespective of the amount of the par value of shares.[74] (Emphasis supplied.)

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[74] *See also* SEC Opinion No. 18-07 dated November 28, 2007 addressed to Mr. Rafael C. Bueno, Jr.; SEC-OGC Opinion No. 03-08 dated January 15, 2008 addressed to Attys. Ruby Rose J. Yusi and Rudyard S. Arbolado; and SEC-OGC Opinion No. 23-10 dated August 18, 2010 addressed to Attys. Teodulo G. San Juan, Jr. and Erdelyn C. Go.

More importantly, the SEC defined "capital" as to include both voting and non-voting in the determination of the nationality of a corporation, to wit:

> In view of the foregoing, it is opined that the term "capital" denotes the sum total of the shares subscribed and paid by the shareholders, or secured to be paid, irrespective of their nomenclature to be issued by the corporation in the conduct of its operation. **Hence, non-voting preferred shares are considered in the computation of the 60-40% Filipino-alien equity requirement of certain economic activities under the Constitution**.[75] (Emphasis supplied.)

In fact, the issue in the present case was already answered by the SEC in its Opinion dated February 15, 1988. The opinion was issued as an answer to the query — "Would it be legal for foreigners to own more than 40% of the common shares but not more than 40% of the total outstanding capital stock which would include both common and non-voting preferred shares?" This is exactly the question in this case. The SEC ruled in the affirmative and stated:

> The pertinent provision of the Philippine Constitution under Article XII, Section 7, reads in part thus:
>
> "No franchise, certificate, or any form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines, or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens. . ." x x x
>
> **The issue raised on your letter zeroes in on the meaning of the word "capital" as used in the above constitutional provision.**
>
> Anent thereto, please be informed that the term "capital" as applied to corporations, refers to the money, property or means contributed by stockholders as the form or basis for the business or enterprise for which the corporation was formed and generally implies that such money or property or means have been contributed in payment for stock issued to the contributors. (*United Grocers, Ltd. v. United States F. Supp*. 834, cited in 11 Fletcher, Cyc. Corp., 1986, rev. vol., Sec. 5080 at 18). As further ruled by the court, "capital of a

[75] SEC Opinion dated April 14, 1987.

corporation is the fund or other property, actually or potentially in its possession, derived or to be derived from the sale by it of shares of its stock or his exchange by it for property other than money. This fund includes not only money or other property received by the corporation for shares of stock but all balances of purchase money, or installments, due the corporation for shares of stock sold by it, and all unpaid subscriptions for shares." (*Williams v. Brownstein*, 1F. 2d 470, cited in 11 Fletcher, Cyc. Corp., 1058 rev. vol., Sec. 5080, p. 21).

The term "capital" is also used synonymously with the words "capital stock," as meaning the amount subscribed and paid-in and upon which the corporation is to conduct its operation. (11 Fletcher, Cyc. Corp. 1986, rev. vol., Sec. 5080 at 15). And, as held by the court in *Haggard v. Lexington Utilities Co.*, (260 Ky 251, 84 SW 2d 84, cited in 11 Fletcher, Cyc. Corp., 1958 rev. vol., Sec. 5079 at 17), **"The capital stock of a corporation is the amount paid-in by its stockholders in money, property or services with which it is to conduct its business, and it is immaterial how the stock is classified, whether as common or preferred."**

The Commission, in a previous opinion, ruled that the term 'capital' denotes the sum total of the shares subscribed and paid by the shareholders or served to be paid, irrespective of their nomenclature. (Letter to Supreme Technotronics Corporation, dated April 14, 1987).

Hence, your query is answered in the affirmative.[76] (Emphasis supplied.)

This opinion was reiterated in another Opinion dated July 16, 1996 addressed to Mr. Mitsuhiro Otsuki:

Relative to the second issue, "In the absence of special provisions the holders of preferred stock in a corporation are in precisely the same position, both with respect to the corporation itself and with respect to the creditors of the corporation, as the holders of common stock, except only that they are entitled to receive dividends on their shares, to the extent guaranteed or agreed upon, before any dividends can be paid to the holders of common stock. x x x. **Accordingly, as a general rule, they are considered in the**

[76] SEC Opinion dated February 15, 1988.

computation of the 60-40% Filipino-alien equity percentage requirement, unless the law covering the type of business to be undertaken provides otherwise. (Emphasis supplied.)

In Opinion No. 32-03 dated June 2, 2003 addressed to Commissioner Armi Jane R. Borje, the SEC likewise held that the word "capital" as used in Sec. 11, Art. XII of the 1987 Constitution refers to the entire outstanding capital stock, regardless of its share classification, *viz*:

Please note that Article XII, Section 11 of the Philippine Constitution provides:

> "No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines at least sixty per centum of whose capital is owned by such citizens . . ."

The legal capacity of the corporation to acquire franchise, certificate, or authority for the operation of a public utility is regulated by the aforequoted Constitutional provision, which requires that at least sixty per centum (60%) of the capital of such corporation be owned by citizens of the Philippines. **However, such provision does not qualify whether the required ownership of "capital" shall be that of the voting or non-voting, common or preferred. Hence, it should be interpreted to refer to the sum total of the outstanding capital stock, irrespective of the nomenclature or classification as common, preferred, voting or non-voting**. (Emphasis supplied.)

In the same way, the SEC has also adopted the same interpretation of the word "capital" to various laws or statutes imposing a minimum on Filipino ownership. In an Opinion dated November 11, 1988 addressed to Mr. Nito Doria, which involved Executive Order No. 226, otherwise known as the Omnibus Investments Code of 1987, the SEC stated:

For permitted and permissible investments, the maximum percentage of control allowable to foreign investors is found in Sections 46 and 47 of the Omnibus Investments Code of 1987, copy enclosed. In relation thereto, "Outstanding capital stock" refers to the total shares issued to subscribers or stockholders, whether or not fully or partially paid, except treasury shares. (Section 137, Corporation

Code of the Philippines), and it is immaterial how the stock is classified, whether as common or preferred, (SEC Opinions, dated June 13, 1988, April 14, 1987, and February 15, 1988).

Again, in an Opinion dated October 16, 1981 addressed to Atty. Jose A. Bañez which involved Republic Act No. 1180, otherwise known as the Retail Trade Nationalization Law, the SEC opined that the issuance of preferred shares to a foreigner will disqualify the corporation from engaging in retail trade, because the law provides that "no association, partnership, or corporation the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail business."[77] The SEC held:

> Your client will lose its character of being one hundred percent (100%) Filipino-owned if said Japanese entity is allowed to subscribe to its preferred shares. The issuance of shares to an alien will reduce the ownership of Filipino citizens to less than the required percentage based on the outstanding capital stock of the corporation, regardless of the fact that said shares are non-voting and non-convertible.
>
> Please be advised that under the Retail Trade Nationalization Law (R.A. 1180), "No association, partnership, or corporation the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail business."

Notably, the foregoing Opinion was rendered before the promulgation of the 1987 Constitution. Thus, it must be assumed that the framers of the Constitution were aware of the administrative interpretation of the word "capital" and that they also adhered to the same interpretation when they re-adopted it in the 1987 Constitution from the 1935 and 1973 Constitutions. As held in *Laxamana v. Baltazar*, "[w]here a statute has received a contemporaneous and practical interpretation and the statute as interpreted is re-enacted, the practical interpretation is accorded greater weight than it ordinarily receives, and is regarded as presumptively the correct interpretation of the law. The rule here is based upon the theory that the legislature is acquainted with the contemporaneous interpretation of a statute, especially

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[77] Republic Act No. 1180, Sec. 1.

when made by an administrative body or executive officers charged with the duty of administering or enforcing the law, and therefore impliedly adopts the interpretation upon re-enactment."[78]

Without a doubt, the SEC's definition of the word "capital" has been consistently applied to include the entire outstanding capital stock of a corporation, irregardless of whether it is common or preferred or voting or non-voting.

This contemporaneous construction of the SEC is entitled to great respect and weight especially since it is consistent with the Constitutional Commission's intention to use the term "capital" as applying to all shares, whether common or preferred. It is well to reiterate the principle of contemporaneous construction and the reason why it is entitled to great respect, *viz*:

> x x x As far back as In re Allen, (2 Phil. 630) a 1903 decision, Justice McDonough, as *ponente*, cited this excerpt from the leading American case of *Pennoyer v. McConnaughy*, decided in 1891: "**The principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty it is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts,** is so firmly embedded in our jurisprudence that no authorities need be cited to support it. (*Ibid.*, 640. *Pennoyer v. McConnaughly* is cited in 140 US 1. The excerpt is on p. 23 thereof. *Cf. Government v. Municipality of Binalonan*, 32 Phil. 634 [1915]) There was a paraphrase by Justice Malcolm of such a pronouncement in *Molina v. Rafferty*, (37 Phil. 545) a 1918 decision:" Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby. (*Ibid.*, 555) Since then, such a doctrine has been reiterated in numerous decisions.[79] (Emphasis supplied.)

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[78] G.R. No. L-5955, September 19, 1952.

[79] *Philippine Global Communications, Inc. v. Relova*, No. 60548, November 10, 1986; citing *Philippine Association of Free Labor Unions [PAFLU] v. Bureau of Labor Relations*, August 21, 1976, 72 SCRA 396, 402.

Similarly, the Corporation Code defines "outstanding capital stock" as the "total shares of stock issued."[80] It does not distinguish between common and preferred shares. It includes all types of shares.

Since foreigners hold 64.27% of to the total number of PLDT's common shares which are entitled to select the Board of Directors, the *ponencia* claims foreigners will elect the majority of the Board of Director in PLDT and, hence, have control over the company.

This is incorrect.

First of all, it has been established that the word "capital" in the phrase "corporation or associations organized under the laws of the Philippines, at least sixty per centum of whose 'capital' is owned by such citizens" under Sec. 11, Art. XII of the 1987 Constitution means both common or preferred shares or voting or non-voting shares. This phrase is **qualified** by the last sentence of Sec. 11, which reads:

x x x **The participation of foreign investors in the governing body of any public utility enterprise shall be limited to their proportionate share in its capital**, and all the executive and managing officers of such corporation or association must be citizens of the Philippines. (Emphasis supplied.)

The aforequoted constitutional provision is unequivocal — it limits the **participation** of the foreign investors in the governing body to their proportionate share in the capital of the corporation. Participation is "the act of taking part in something."[81] Accordingly, it includes the right to elect or vote for in the election of the members of the Board of Directors. However, this right to participate in the election is restricted by the first sentence of Sec. 11 such that their right cannot exceed their proportionate share in the capital, *i.e.*, 40%. In other words, the right of foreign investors to elect the members of the Board of Directors cannot exceed the voting rights of the 40% of the common

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[80] Sec. 137.

[81] *BLACK'S LAW DICTIONARY* (9th ed. 2009).

shares, even though their ownership of common shares may exceed 40%. Thus, since they can only vote up to 40% of the common shares of the corporation, they will never be in a position to elect majority of the members of the Board of Directors. Consequently, control over the membership of the Board of Directors will always be in the hands of Filipino stockholders although they actually own less than 50% of the common shares.

Let Us apply the foregoing principles to the situation of PLDT. Granting without admitting that foreigners own 64.27% of PLDT's common shares and say they own 40% of the total number of common and preferred shares, still they can only vote up to 40% of the common shares of PLDT since their participation in the election of the Board of Directors (the governing body of the corporation) is limited by the 40% ownership of the capital under the first sentence of Sec. 11, Art. XII of the Constitution. The foreigners can only elect members of the Board of Directors based on their 40% ownership of the common shares and their directors will only constitute the minority. In no instance can the foreigners obtain the majority seats in the Board of Directors.

Further, the 2010 General Information Sheet (GIS) of PLDT reveals that among the thirteen (13) members of the Board of Directors, only two (2) are foreigners. It also reveals that the foreign investors only own 13.71% of the capital of PLDT.[82]

Obviously, the nomination and election committee of PLDT uses the 40% cap on the foreign ownership of the capital which explains why the foreigners only have two (2) members in the Board of Directors. It is apparent that the 64.27% ownership by foreigners of the common shares cannot be used to elect the majority of the Board of Directors. The fact that the proportionate share of the foreigners in the capital (voting and non-voting shares or common and preferred shares) is even less than 40%, then they are only entitled to voting rights equivalent to the said proportionate share in the capital and in the process elect

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[82] <http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_(as%20of%207.2.10)_final.pdf> (last visited June 23, 2011).

only a smaller number of directors. This is the reality in the instant case. Hence, the majority control of Filipinos over the management of PLDT is, at all times, assured.

This intent to limit the participation of the foreign investors in the governing body of the corporation was solidified in Commonwealth Act No. 108, otherwise known as the *Anti-Dummy Law*. Sec. 2-A of the aforementioned law, as amended, provides in part:

> x x x Provided, finally, that the election of aliens as members of the Board of Directors of governing body of corporations or associations engaging in partially nationalized activity shall be allowed in proportion to their allowable participation or share in the capital of such entities.

The view that the definition of the word "capital" is limited to common or voting shares alone would certainly have the effect of removing the 60-40% nationality requirement on the non-voting shares. This would then give rise to a situation wherein foreign interest would not really be limited to only 40% but may even extend beyond that because foreigners could also own the entire 100% of the preferred or non-voting shares. As a result, Filipinos will no longer have effective ownership of the corporate assets which may include lands. This is because the actual Filipino equity constitutes only a minority of the entire outstanding capital stock. Therefore, the company would then be technically owned by foreigners since the actual ownership of at least 60% of the entire outstanding capital stock would be left to the hands of the foreigners. Allowing this to happen would violate and circumvent the purpose for which the provision in the Constitution was created.[83]

This situation was the subject matter of the Opinion dated December 27, 1995 addressed to Mr. George Lavidia where the SEC opined that for the computation of the required minimum 60% Filipino ownership in a land owning corporation, both voting and preferred non-voting shares must be included, to wit:

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[83] *See* SEC Opinion dated December 27, 1995 addressed to Mr. George Lavidia.

The [law] does not qualify whether the required ownership of "capital stock" are voting or non-voting. Hence, it should be interpreted to mean the sum total of the capital stock subscribed, irrespective of their nomenclature and whether or not they are voting or non-voting. The use of the phrase "capital stock belongs" connotes that in order to comply with the Filipino nationality requirement for land ownership, it is necessary that the criterion of "beneficial ownership" should be met, not merely the control of the corporation.

To construe the 60-40% equity requirement is merely based on the voting shares, disregarding the preferred non-voting shares, not on the total outstanding subscribed capital stock, would give rise to a situation where the actual foreign interest would not really be only 40% but may extend beyond that because they could also own even the entire preferred non-voting shares. In this situation, Filipinos may have the control in the operation of the corporation by way of voting rights, but have no effective ownership of the corporate assets which include lands, because the actual Filipino equity constitutes only a minority of the entire outstanding capital stock. Therefore, in essence, the company, although controlled by Filipinos, is beneficially owned by foreigners since the actual ownership of at least 60% of the entire outstanding capital stocks would be in the hands of foreigners. Allowing this situation would open the floodgates to circumvention of the intent of the law to make the Filipinos the principal beneficiaries in the ownership of Philippine alienable lands.

x x x x x x x x x

Thus, for purpose of "land ownership," non-voting preferred shares should be included in the computation of the statutory 60-40% Filipino-alien equity requirement. To rule otherwise would result in the emergence of foreign beneficial ownership of land, thereby defeating the purpose of the law. On the other hand, to view the equity ratio as determined on the basis of the entire outstanding capital stock would be to uphold the unequivocal purpose of the above-cited law of ensuring Filipino rightful domination of land ownership. (Emphasis supplied.)

Clearly, applying the *ponencia*'s definition of the word "capital" will give rise to a greater anomaly because it will

result in the foreigner's obtaining beneficial ownership over the corporation, which is contrary to the provisions of the Constitution; whereas interpreting "capital" to include both voting and non-voting shares will result in giving both legal and beneficial ownership of the corporation to the Filipinos.

In the event that the word "capital" is construed as limited to common or voting shares only, it should not have any retroactive effect. Reliance in good faith on the opinions issued by the SEC, the regulating body in charged with the duty to enforce the nationality required by the Constitution, should not prejudice any one, especially not the foreign investors. Giving such interpretation retroactive effect is tantamount to violation of due process and would impact negatively on the various foreign investments already present in the country. Accordingly, such construction should only be applied prospectively.

In sum, the Constitution requires that 60% of the capital be owned by Filipinos. It further requires that the foreign ownership of capital be limited to 40%, as well as its participation in the governing body of the public utility corporation be limited to its proportionate share in the capital which cannot exceed 40% thereof. As a result, control over the Board of Directors and full beneficial ownership of 60% of the capital stock of the corporation are secured in the hands of the Filipinos.

I, therefore, vote to **DISMISS** the petition.

DISSENTING OPINION

ABAD, *J.*:

In 1928, the legislature enacted Act 3436, granting Philippine Long Distance Telephone Company (PLDT) a franchise to provide telecommunications services across the country. Forty years later in 1969, General Telephone and Electronics Corporation, an American company and major PLDT stockholder, sold 26% of PLDT's equity to the Philippine Telecommunications Investment Corporation (PTIC).

Subsequently, PTIC assigned 46% of its equity or 111,415 shares of stock to Prime Holdings, Inc. In 1986, the Presidential Commission on Good Government sequestered these shares. Eventually, the Court declared these as properties of the Republic of the Philippines.

In 1999, First Pacific, a Bermuda-registered and Hongkong-based investment firm, acquired the remaining 54% of PTIC's equity in PLDT.

In 2006, the government's Inter-agency Privatization Council offered to auction the 46% PTIC equity in PLDT that the Court adjudged to the Republic. Parallax Venture Fund XXVII won with a bid of ₱25.2 billion or US$510 million. First Pacific announced that it would exercise its right of first refusal and buy those shares by matching Parallax's bid. In 2007, First Pacific, through its subsidiary, Metro Pacific Assets Holdings, Inc., entered into a Conditional Sale and Purchase Agreement with the national government involving the 46% PTIC equity for ₱25.2 billion or US$510 million.

In this petition for prohibition, injunction, declaratory relief, and declaration of nullity of sale, petitioner Wilson P. Gamboa, a PLDT stockholder, seeks to annul the sale of the 46% PTIC equity or 111,415 shares of stock to Metro Pacific on the ground that it violates Section 11, Article XII of the 1987 Constitution which limits foreign ownership of a public utility company to 40% of its capital. Gamboa claims that since PTIC is a PLDT stockholder, the sale of the 46% of its equity is actually an indirect sale of 6.3% PLDT equity or 12 million shares of stock. This would increase First Pacific's equity in PLDT from 30.7% to 37%, and concomitantly increase the common shareholdings of foreigners in PLDT to about 64.27%.

The action presents two primordial issues:

1. Whether or not the Court can hear and decide Gamboa's petition for prohibition, injunction, declaratory relief, and declaration of nullity of sale; and

2. Whether or not Metro Pacific's acquisition of 46% of PTIC's equity violates the constitutional limit on foreign ownership of

the capital of PLDT, a public utility company, provided under Section 11, Article XII of the 1987 Constitution.

One. The objection to the idea of the Court hearing and deciding Gamboa's action seems to have some basis in the rules. Under Section 1, Rule 56 of the Rules of Court, only the following cases may be filed originally in the Supreme Court:

> Sec. 1. Original cases cognizable. — Only petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus*, disciplinary proceedings against members of the judiciary and attorneys, and cases affecting ambassadors, other public ministers and consuls may be filed originally in the Supreme Court.

Strictly speaking, Gamboa's actions for injunction, declaratory relief, and declaration of nullity of sale are not among the cases that can be initiated before the Supreme Court. Those actions belong to some other tribunal.

And, although the Court has original jurisdiction in prohibition cases, the Court shares this authority with the Court of Appeals and the Regional Trial Courts. But this concurrence of jurisdiction does not give the parties absolute and unrestrained freedom of choice on which court the remedy will be sought. They must observe the hierarchy of courts.[1] As a rule, the Supreme Court will not entertain direct resort to it unless the remedy desired cannot be obtained in other tribunals. Only exceptional and compelling circumstances such as cases of national interest and of serious implications justify direct resort to the Supreme Court for the extraordinary remedy of writ of *certiorari*, prohibition, or *mandamus*.[2]

The majority of the Court of course suggests that although Gamboa entitles his actions as ones for injunction, declaratory relief, and declaration of nullity of sale, what controls the nature

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[1] *Fortich v. Corona*, G.R. No. 131457, April 24, 1998, 289 SCRA 624, 645.

[2] *Springfield Development Corporation, Inc. v. Presiding Judge, RTC, Misamis Oriental, Br. 40, Cagayan de Oro City*, G.R. No. 142628, February 6, 2007, 514 SCRA 326, 342-343; *Fortich v. Corona*, *id.*

of such actions are the allegations of his petition. And a valid special civil action for *mandamus* can be made out of those allegations since respondent Secretary of Finance, his undersecretary, and respondent Chairman of the Securities and Exchange Commission are the officials who appear to have the duty in law to implement the foreign ownership restriction that the Constitution commands.[3]

To a certain extent, I agree with the position that the majority of my colleagues takes on this procedural issue. I believe that a case can be made for giving due course to Gamboa's action. Indeed, there are in his actions compelling reasons to relax the doctrine of hierarchy of courts. The need to address the important question of defining the constitutional limit on foreign ownership of public utilities under Section 11, Article XII of the 1987 Constitution, a bedrock policy adopted by the Filipino people, is certainly a matter of serious national interest. Such policy is intended to develop a self-reliant and independent national economy effectively controlled by Filipino entrepreneurs.

Indeed, as the Court said in *Espina v. Zamora*,[4] the provisions of Article XII of the 1987 Constitution lay down the ideals of economic nationalism. One of these is the Filipinization of public utilities under Section 11 which recognizes the very strategic position of public utilities both in the national economy and for national security.[5] The participation of foreign capital is encouraged since the establishment and operation of public utilities may require the investment of substantial capital that Filipino citizens could possibly not afford. But at the same time, the Constitution wants to limit foreign involvement to prevent them

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[3] Decision, p. 10.

[4] G.R. No. 143855, September 21, 2010.

[5] BERNAS, JOAQUIN G., *FOREIGN RELATIONS IN CONSTITUTIONAL LAW*, 1995 Ed., p. 87 citing *Smith, Bell and Co. v. Natividad*, 40 Phil. 136, 148 (1919); *Luzon Stevedoring Corporation v. Anti-Dummy Board*, 46 SCRA 474, 490 (1972); DE LEON, HECTOR S., *PHILIPPINE CONSTITUTIONAL LAW (Principles and Cases)*, 2004 Ed., Vol. 2, p. 940.

from assuming control of public utilities which may be inimical to national interest.[6]

Two. Still, the question is whether it is for the Court to decide in this case the shape and substance of what the Constitution meant when it restricted the size of foreign ownership of the capital of public utility corporations provided for in Section 11, Article XII of the 1987 Constitution which reads:

> Section 11. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or associations organized under the laws of the Philippines, at least sixty per centum of whose capital is owned by such citizens; x x x.

Gamboa contends that the constitutional limit on foreign ownership in public utilities should be based on the ownership of **common** or **voting shares** since it is through voting that stockholders are able to have control over a corporation. Preferred or non-voting shares should be excluded from the reckoning.

But this interpretation, adopted by the majority, places on the Court the authority to define and interpret the meaning of "capital" in Section 11. I believe, however, that such authority should be for Congress to exercise since it partakes of policy making founded on a general principle laid down by the fundamental law. The capital restriction written in the constitution lacks sufficient details for orderly and meaningful implementation. Indeed, in the twenty-four years that the provision has been in the Constitution, no concrete step has been taken by any government agency to see to its actual implementation given the absence of clear legislative guidance on how to go about it.

It has been said that a constitution is a system of fundamental laws for the governance and administration of a nation. It prescribes the permanent framework of a system of government, assigns to the different departments their respective powers and duties, and establishes certain fixed principles on which the

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[6] DE LEON, HECTOR S., *PHILIPPINE CONSTITUTIONAL LAW (Principles and Cases)*, 2004 Ed., Vol. 2, p. 946.

government is founded.[7] But while some constitutional provisions are self-executing, others are not.

A constitutional provision is self-executing if it fixes the nature and extent of the right conferred and the liability imposed such that they can be determined by an examination and construction of its terms, and there is no language indicating that the subject is referred to the legislature for action. On the other hand, if the provision needs a supplementary or enabling legislation, it is merely a declaration of policy and principle which is not self-executing.[8]

Here, the Constitution simply states that no franchise for the operation of a public utility shall be granted to a corporation organized under Philippine laws unless at least sixty per centum of its capital is owned by Filipino citizens.

Evidently, the Constitution fails to provide for the meaning of the term "capital," considering that the shares of stock of a corporation vary in kinds. The usual classification depends on how profits are to be distributed and which stockholders have the right to vote the members of the corporation's board of directors.

The Corporation Code does not offer much help, albeit it only confuses, since it uses the terms "capital," "capital stock," or "outstanding capital stock" interchangeably. "Capital" refers to the money, property, or means contributed by stockholders in the corporation and generally implies that the same have been contributed in payment for stock issued to the stockholders.[9] "Capital stock" signifies the amount subscribed and paid-in in money, property or services.[10] "Outstanding capital stock" means

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[7] *Manila Prince Hotel v. Government Service Insurance System*, G.R. No. 122156, February 3, 1997, 267 SCRA 408, 430.

[8] *Id.* at 431.

[9] Agpalo, Ruben E., *COMMENTS ON THE CORPORATION CODE OF THE PHILIPPINES*, 2001 Ed., p. 50.

[10] *Id.* at 51.

the total shares of stock issued to stockholders, whether or not fully or partially paid, except treasury shares.[11]

Meanwhile, the Foreign Investments Act of 1991 defines a "Philippine national" as, among others, a corporation organized under the laws of the Philippines of which at least 60% of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines.[12] This gives the impression, as Justice Carpio noted, that the term "capital" refers only to controlling interest or shares entitled to vote.[13]

On the other hand, government agencies such as the Securities and Exchange Commission, institutions, and corporations (such as the Philippine National Oil Company-Energy Development Corporation) interpret the term "capital" to include both preferred and common shares.[14]

Under this confusing legislative signals, the Court should not leave the matter of compliance with the constitutional limit

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[11] Section 137. The Corporation Code.

[12] Sec. 3. Definitions. — As used in this Act:

a. The term "Philippine national" shall mean a citizen of the Philippines; of a domestic partnership or association wholly owned by citizens of the Philippines; or a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: Provided, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation, shall be considered a "Philippine national." (As amended by Republic Act 8179)

[13] Decision, pp. 25-26.

[14] *Id.* at 17.

on foreign ownership in public utilities, a matter of transcendental importance, to judicial legislation especially since any ruling the Court makes on the matter could have deep economic repercussions. This is not a concern over which the Court has competence. The 1987 Constitution laid down the general framework for restricting foreign ownership of public utilities. It is apt for Congress to build up on this framework by defining the meaning of "capital," establishing rules for the implementation of the State policy, providing sanctions for its violation, and vesting in the appropriate agency the responsibility for carrying out the purposes of such policy.

Parenthetically, there have been several occasions in the past where Congress provided supplementary or enabling legislation for constitutional provisions that are not self-executing. To name just some: the Comprehensive Agrarian Reform Law of 1988,[15] the Indigenous Peoples Rights Act of 1997,[16] the Local Government Code of 1991,[17] the Anti-Graft and Corrupt Practices Act,[18] the Speedy Trial Act of 1998,[19] the Overseas Absentee Voting Act of 2003,[20] the Party-List System Act,[21] the Paternity Leave Act of 1996,[22] and the Solo Parents' Welfare Act of 2000.[23]

Based on the foregoing, I vote to **DENY** the petition on the ground that the constitutional limit on foreign ownership in public utilities under Section 11, Article XII of the 1987 Constitution is not a self-executing provision and requires an implementing legislation for its enforcement.

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[15] Section 21, Article II.

[16] Section 22, Article II.

[17] Section 25, Article II.

[18] Section 27, Article II.

[19] Section 16, Article III.

[20] Section 2, Article V.

[21] Section 5, Article VI.

[22] Section 3, Article XIII.

[23] *Id.*

EN BANC

[G.R. No. 176951. June 28, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF BAYBAY, PROVINCE OF LEYTE; MUNICIPALITY OF BOGO, PROVINCE OF CEBU; MUNICIPALITY OF CATBALOGAN, PROVINCE OF WESTERN SAMAR; MUNICIPALITY OF TANDAG, PROVINCE OF SURIGAO DEL SUR; MUNICIPALITY OF BORONGAN, PROVINCE OF EASTERN SAMAR; and MUNICIPALITY OF TAYABAS, PROVINCE OF QUEZON,** *respondents.*

[G.R. No. 177499. June 28, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF LAMITAN, PROVINCE OF BASILAN; MUNICIPALITY OF TABUK, PROVINCE OF KALINGA; MUNICIPALITY OF BAYUGAN, PROVINCE OF AGUSAN DEL SUR; MUNICIPALITY OF BATAC, PROVINCE OF ILOCOS NORTE; MUNICIPALITY OF MATI, PROVINCE OF DAVAO ORIENTAL; and MUNICIPALITY OF GUIHULNGAN, PROVINCE OF NEGROS ORIENTAL,** *respondents.*

[G.R. No. 178056. June 28, 2011]

LEAGUE OF CITIES OF THE PHILIPPINES (LCP), represented by LCP National President Jerry P. Treñas; CITY OF CALBAYOG, represented by Mayor Mel Senen S. Sarmiento; and JERRY P. TREÑAS, in his personal capacity as Taxpayer, *petitioners, vs.* **COMMISSION ON ELECTIONS; MUNICIPALITY OF CABADBARAN, PROVINCE OF AGUSAN DEL NORTE; MUNICIPALITY OF CARCAR, PROVINCE OF CEBU; MUNICIPALITY OF EL SALVADOR, PROVINCE OF MISAMIS ORIENTAL; MUNICIPALITY OF NAGA, CEBU; and DEPARTMENT OF BUDGET AND MANAGEMENT,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; INTERNAL RULES OF THE SUPREME COURT; SECOND MOTION FOR RECONSIDERATION; A PROHIBITED PLEADING, AND ONLY FOR EXTRAORDINARILY PERSUASIVE REASONS AND ONLY AFTER AN EXPRESS LEAVE HAS BEEN FIRST OBTAINED MAY A SECOND MOTION FOR RECONSIDERATION BE ENTERTAINED. — The *Motion for Reconsideration*, being a second motion for reconsideration, cannot be entertained. As to that, Section 2 of Rule 51 of the *Rules of Court* is unqualified. The Court has firmly held that a second motion for reconsideration is a prohibited pleading, and only for extraordinarily persuasive reasons and only after an express leave has been first obtained may a second motion for reconsideration be entertained. The restrictive policy *against* a second motion for reconsideration has been re-emphasized in the recently promulgated *Internal Rules of the Supreme Court*, whose Section 3, Rule 15 states: Section 3. *Second motion for reconsideration.* — **The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership.** There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise

patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. **A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.** In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.

2. ID.; ID.; A SECOND MOTION FOR RECONSIDERATION CAN ONLY BE ENTERTAINED BEFORE THE RULING SOUGHT TO BE RECONSIDERED BECOMES FINAL BY OPERATION OF LAW OR BY THE COURT'S DECLARATION. — We observe, too, that the prescription that a second motion for reconsideration "can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration" even renders the denial of the petitioners' *Motion for Reconsideration* more compelling. As the resolution of April 12, 2011 bears out, the ruling sought to be reconsidered became final *by the Court's express declaration*. Consequently, the denial of the *Motion for Reconsideration* is immediately warranted.

3. ID.; ID.; NO SIMILAR DECLARATION FAVORS PETITIONER'S PRESENT MOTION FOR RECONSIDERATION AND THE COURT *EN BANC'S* RESOLUTION DATED JUNE 2, 2009, DECLARING RESPONDENT'S SECOND MOTION FOR RECONSIDERATION NOT A PROHIBITED PLEADING. — Still, the petitioners seem to contend that the Court had earlier entertained and granted the respondents' own second motion for reconsideration. There is no similarity between then and now, however, for the Court *en banc* itself unanimously declared in the resolution of June 2, 2009 that the respondents' second motion for reconsideration was "no longer a prohibited pleading." No similar declaration favors the petitioners' *Motion for Reconsideration.*

CARPIO, *J., dissenting opinion:*

1. POLITICAL LAW; 1987 CONSTITUTION; LOCAL GOVERNMENT; CITYHOOD LAWS VIOLATE SECTION 10, ARTICLE X OF THE CONSTITUTION; THE CREATION OF LOCAL GOVERNMENT UNITS MUST FOLLOW THE CRITERIA ESTABLISHED IN THE

LOCAL GOVERNMENT CODE ITSELF AND NOT IN ANY OTHER LAW AS PROVIDED FOR IN SECTION 10, ARTICLE X OF THE CONSTITUTION. — The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code itself** and not in any other law. There is only one Local Government Code. To avoid discrimination and ensure uniformity and equality, the Constitution expressly requires Congress to stipulate in the Local Government Code itself all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. **Congress cannot write such criteria in any other law, like the Cityhood Laws.**

2. ID.; ID.; ID.; THE SEPARABILITY CLAUSE IN EACH CITYHOOD LAW EXPRESSLY AND UNEQUIVOCALLY ACKNOWLEDGES THE SUPERIORITY OF THE LOCAL GOVERNMENT CODE, AND THAT IN CASE OF CONFLICT, THE LOCAL GOVERNMENT CODE SHALL PREVAIL OVER THE CITYHOOD LAW. — Each Cityhood Law provides in its Separability Clause that if any of its provisions is "**inconsistent with the Local Government Code**," the other consistent provisions "**shall continue to be in full force and effect.**" **The clear and inescapable implication is that any provision in each Cityhood Law that is "inconsistent with the Local Government Code" has no force and effect — in short, void and ineffective.** Each Cityhood Law expressly and unequivocally acknowledges the superiority of the Local Government Code, and that **in case of conflict, the Local Government Code shall prevail over the Cityhood Law.** The clear intent and express language of the Cityhood Laws is for these laws to conform to the Local Government Code and not the other way around.

3. ID.; ID.; ID.; THE CITYHOOD LAWS DO NOT AMEND THE LOCAL GOVERNMENT CODE; SAID LAWS DO NOT FORM INTEGRAL PARTS OF THE LOCAL GOVERNMENT CODE BUT ARE SEPARATE AND DISTINCT LAWS. — Moreover, Congress, in providing in the Separability Clause that the Local Government Code shall prevail over the Cityhood Laws, treats the Cityhood Laws as separate and distinct from the Local Government Code. In other words, **the Cityhood Laws *do not form integral parts* of the Local Government Code but are separate and distinct**

laws. There is therefore no question that the Cityhood Laws are laws ***other*** than the Local Government Code. As such, the Cityhood Laws cannot stipulate an exception from the requirements for the creation of cities, prescribed in the Local Government Code, without running afoul of the explicit mandate of Section 10, Article X of the 1987 Constitution. Contrary to the faulty conclusion of the majority, the Cityhood Laws do not amend the Local Government Code. The Legislature never intended the Cityhood Laws to amend the Local Government Code. Nowhere in the plain language of the Cityhood Laws can this interpretation be discerned. Neither the title nor the body of the Cityhood Laws sustains such conclusion. Simply put, there is absolutely nothing in the Cityhood Laws to support the majority decision that the Cityhood Laws **amended** the Local Government Code.

4. ID.; ID.; ID.; THE CITYHOOD LAWS VIOLATE THE EQUAL PROTECTION CLAUSE; THE FACT OF PENDENCY OF A CITYHOOD BILL IN THE 11TH CONGRESS LIMITS THE EXEMPTION TO A SPECIFIC CONDITION EXISTING AT THE TIME OF PASSAGE OF RA 9009, AND SINCE THAT SPECIFIC CONDITION WILL NEVER HAPPEN AGAIN, IT VIOLATES THE REQUIREMENT THAT A VALID CLASSIFICATION MUST NOT BE LIMITED TO EXISTING CONDITIONS ONLY. — There is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. The mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. The pendency of a cityhood bill in the 11th Congress does not affect or determine the level of income of a municipality. Municipalities with pending cityhood bills in the 11th Congress might even have lower annual income than municipalities that did not have pending cityhood bills. In short, the classification criterion — mere pendency of a cityhood bill in the 11th Congress — is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities. The fact of pendency of a cityhood bill in the 11th Congress limits the exemption to a specific condition existing at the time of passage of RA 9009. That specific condition will never

happen again. This violates the requirement that a valid classification must not be limited to existing conditions only.

5. ID.; ID.; ID.; LIMITING THE EXEMPTION TO THE 16 MUNICIPALITIES VIOLATES THE REQUIREMENT THAT THE CLASSIFICATION MUST APPLY TO ALL SIMILARLY SITUATED. — In the same vein, the exemption provision in the Cityhood Laws gives the 16 municipalities a unique advantage based on an arbitrary date — the filing of their cityhood bills before the end of the 11th Congress — as against all other municipalities that want to convert into cities after the effectivity of RA 9009. Further, limiting the exemption only to the 16 municipalities violates the requirement that the classification must apply to all similarly situated. Municipalities with the same income as the 16 respondent municipalities cannot convert into cities, while the 16 respondent municipalities can. Clearly, as worded the exemption provision found in the Cityhood Laws, even if it were written in Section 450 of the Local Government Code, is unconstitutional for violation of the equal protection clause.

6. ID.; ID.; ID.; RESPONDENT MUNICIPALITIES MUST STRICTLY COMPLY WITH THE ₱100 MILLION INCOME REQUIREMENT UNDER THE PREVAILING LOCAL GOVERNMENT CODE. — RA No. 9009 amended the Local Government Code precisely because the criteria in the old Local Government Code were no longer sufficient. In short, RA No. 9009 repealed the old income requirement of ₱20 million, a requirement that no longer exists in our statute books. Compliance with the old income requirement is compliance with a repealed, dead, and non-existent law — a totally useless, futile, and empty act. Worse, compliance with the old requirement is an ***outright violation*** of the Constitution which expressly commands that "**no x x x city x x x shall be created x x x except in accordance with the criteria established in the local government code**." Therefore, respondent municipalities in order to validly convert into cities must comply with the ₱100 million income requirement under the prevailing Local Government Code, as amended by RA 9009, and not with the old ₱20 million income requirement. Otherwise, such compliance with the old ₱20 million income requirement is void for being unconstitutional. There must be strict compliance with the express command of the Constitution that "**no city**

x x x shall be created x x x except in accordance with the criteria established in the local government code." Substantial compliance is insufficient because it will discriminate against all other cities that were created **before and after the enactment** of the Cityhood Laws in strict compliance with the criteria in the Local Government Code, as amended by RA No. 9009. The conversion of municipalities into new cities means an increase in the Internal Revenue Allotment of the former municipalities and a **corresponding decrease** in the Internal Revenue Allotment of all other existing cities. There must be strict, not only substantial, compliance with the constitutional requirement because the economic lifeline of existing cities may be seriously affected.

7. ID.; ID.; ID.; THE INCREASE IN INCOME REQUIREMENT OF ₱100 MILLION IS NEITHER ARBITRARY NOR DIFFICULT TO COMPLY; THE INCREASE IS A POLICY DETERMINATION INVOLVING THE WISDOM OF THE LAW, WHICH EXCLUSIVELY LIES WITHIN THE PROVINCE OF THE LEGISLATURE. — The Legislature, in enacting RA No. 9009, is not required by the Constitution to show the courts data like inflation figures to support the increased income requirement. As long as the increased income requirement is not impossible to comply, such increase is a policy determination involving the wisdom of the law, which exclusively lies within the province of the Legislature. When the Legislature enacts laws increasing taxes, tax rates, or capital requirements for businesses, the Court cannot refuse to apply such laws on the ground that there is no economic justification for such increases. Economic, political or social justifications for the enactment of laws go into the wisdom of the law, outside the purview of judicial review. This Court cannot refuse to apply the law unless the law violates a specific provision of the Constitution. There is plainly nothing unconstitutional in increasing the income requirement from ₱20 million to ₱100 million because such increase does not violate any express or implied provision of the Constitution.

8. ID.; ID.; ID.; THE CITYHOOD LAWS VIOLATE SECTION 6, ARTICLE X OF THE CONSTITUTION; IF THE CRITERIA IN CREATING LOCAL GOVERNMENT UNITS ARE NOT UNIFORM AND DISCRIMINATORY, THERE CAN BE NO FAIR AND JUST DISTRIBUTION

OF THE NATIONAL TAXES TO LOCAL GOVERNMENT UNITS. — Uniform and non-discriminatory criteria as prescribed in the Local Government Code are essential to implement a fair and equitable distribution of national taxes to all local government units. Section 6, Article X of the Constitution provides: Local government units shall have a **just share**, as determined by law, in the national taxes which shall be automatically released to them. If the criteria in creating local government units are not uniform and discriminatory, there can be no fair and just distribution of the national taxes to local government units. A city with an annual income of only ₱20 million, all other criteria being equal, should not receive the same share in national taxes as a city with an annual income of ₱100 million or more. The criteria of land area, population and income, as prescribed in Section 450 of the Local Government Code, must be strictly followed because such criteria, prescribed by law, are material in determining the "just share" of local government units in national taxes. Since the Cityhood Laws do not follow the income criterion in Section 450 of the Local Government Code, they prevent the fair and just distribution of the Internal Revenue Allotment in violation of Section 6, Article X of the Constitution. As pointed out by petitioners, "respondent municipalities have a total population equivalent to that of Davao City only, or around 1.3 million people. Yet, the IRA that pertains to the 16 municipalities (₱4,019,776,072) is more than double that for Davao City (₱1,874,175,271). x x x As a result, the per capita IRA alloted for the individual denizen of Davao is even less than half of the average per capita IRA of the inhabitants of the sixteen (16) municipalities (₱1,374.70 divided by ₱3,117.24)." This indisputable fact vividly reveals the economic inequity that will inevitably result from the unjust allocation of the IRA as a consequence of the conversion of respondent municipalities into cities. Clearly, if the existing cities' share in the Internal Revenue Allotment is unreasonably reduced, it is possible, even expected, that these cities may have to lay-off workers and abandon projects, greatly hampering, or worse paralyzing, the delivery of much needed public services in their respective territorial jurisdictions.

9. ID.; ID.; ID.; THE CITYHOOD LAWS MUST BE STRICKEN DOWN FOR BEING UNCONSTITUTIONAL. — The Constitution expressly requires Congress to stipulate in the Local Government Code itself all the criteria necessary for

the creation of a city, including the conversion of a municipality into a city. To avoid discrimination and ensure uniformity and equality, such criteria cannot be embodied in any other law except the Local Government Code. In this case, the Cityhood Laws, which are unmistakably laws other than the Local Government Code, provide an exemption from the increased income requirement for the creation of cities under Section 450 of the Local Government Code, as amended by RA No. 9009. Clearly, the Cityhood Laws contravene the letter and intent of Section 10, Article X of the Constitution. In addition, the Cityhood Laws violate the equal protection clause and Section 6, Article X of the Constitution on the fair and equitable distribution of national taxes to all local government units. Without any doubt, the Cityhood Laws must be striken down for being unconstitutional.

SERENO, *J., dissenting opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; OBEDIENCE TO THE RULE OF LAW FORMS THE BEDROCK OF OUR SYSTEM OF JUSTICE. — Our system of democracy is committed irrevocably to a government of laws, and not of men. Laws give witness to society's moral values and are the depositories of what the sovereign as a whole has agreed to uphold as the minimum standards of conduct that will govern relationships and transactions within that society. In a representative democracy, the Filipino people, through their elected representatives, deliberate, distill and make moral judgments, which are crystallized into written laws that are made public, accessible and binding to all. Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner. Obedience to the rule of law forms the bedrock of our system of justice. Once the sovereign people's "soft" moral choices are hardened through the constitutionally mandated legislative process, statutory laws perform an equalizing function of imposing a knowable standard of conduct or behavior to which all members of society must conform to — a social contract which everyone regardless of class, sex or religion is bound. Legislative

enactments are ordinarily prospective and general in character insofar as they prescribe limitations on an individual's future conduct. Under the rule of law, ordinary people can reasonably assume that another person's future conduct will be in observance of the laws and can conceivably expect that any deviation therefrom will be punished accordingly by responsible authorities. Thus, written constitutions and statutory laws allow citizens a minimum confidence in a world of uncertainty: Through constitutionalism we placed limits on both our political institutions and ourselves, hoping that democracies, historically always turbulent, chaotic, and even despotic, might now become restrained, principled, thoughtful and just. So we bound ourselves over to a law that we made and promised to keep. And though a government of laws did not displace governance by men, it did mean that now men, democratic men, would try to live by their word.

2. ID.; JUDICIARY DEPARTMENT; THE COURT'S PRIMARY ADJUDICATORY FUNCTION IS TO MARK THE METES AND BOUNDS OF THE LAW IN SPECIFIC AREAS OF APPLICATION, AS WELL AS TO PASS JUDGMENT ON THE COMPETING POSITIONS IN A CASE PROPERLY BROUGHT BEFORE IT. — As man-made creations, however, laws are not always entirely encompassing, as future conditions may change – conditions that could not have been perceived or accounted for by the legislators. Actual situations may arise between two conflicting claims by specific parties with differing interpretations of the law. In those instances in which a gray area or an unintended gap exists in the implementation or execution of laws, the judicial department is charged with the duty of determining the limitations that the law places upon all actions of individuals. Hence, the court's primary adjudicatory function is to mark the metes and bounds of the law in specific areas of application, as well as to pass judgment on the competing positions in a case properly brought before it. The Court not only functions to adjudicate rights among the parties, but also serves the purpose of a supreme tribunal of last resort that establishes uniform rules of civil justice. Jurisprudence "narrows the field of uncertainty" in the application of an unclear area of the law. The certainty of judicial pronouncement lends respect for and adherence to the rule of law — "the idea that all citizens and all organs of government are bound by rules fixed in advance, which make

it possible to foresee how the coercive powers of government will be used, whether in its own interests or in aid of citizens who call on them, in particular circumstances." The Court's historic role of pronouncing what the law is between the parties is the cornerstone of a government of laws, and not of men. Justice Antonin Scalia of the United States Supreme Court expounded on the objectives of uniformity and predictability of judicial decisions, to wit: This last point suggests another obvious advantage of establishing as soon as possible a clear, general principle of decision: **predictability. Even in simpler times uncertainty has been regarded as incompatible with the Rule of Law. Rudimentary justice requires that those subject to the law must have the means of knowing what it prescribes**. It is said that one of emperor Nero's nasty practices was to post his edicts high on the columns so that they would be harder to read and easier to transgress. **As laws have become more numerous, and as people have become increasingly ready to punish their adversaries in the courts, we can less and less afford protracted uncertainty regarding what the law may mean**. Predictability, or as Llewellyn put it, "reckonability," is a needful characteristic of any law worthy of the name. There are times when even a bad rule is better than no rule at all.

3. ID.; ID.; THE PUBLIC CONFUSION, SOWN BY THE PENDULUM SWING OF THE COURT'S DECISION, HAS YIELDED UNPREDICTABILITY IN THE JUDICIAL DECISION MAKING PROCESS AND HAS SPAWNED UNTOLD CONSEQUENCES UPON THE PUBLIC'S CONFIDENCE IN THE ENDURING STABILITY OF THE RULE OF LAW IN OUR JURISDICTION. — In the instant case, the public confusion, sown by the pendulum swing of the Court's decisions, has yielded unpredictability in the judicial decision-making process and has spawned untold consequences upon the public's confidence in the enduring stability of the rule of law in our jurisdiction. The Court has been entrusted by the sovereign with the duty of voicing out and sharpening with finality society's collective ideals in its written decisions. Yet, if cases are litigated in perpetuity, and judgments are clouded with continuous uncertainty, the public's confidence in the stability of judicial precedents promulgated by the Court would be greatly diminished. In this case, the Court has reviewed and reconsidered, no less than five times already, the constitutionality

of the sixteen Cityhood Laws. During this time, the public has been made to endure an inordinate degree of indecision that has disturbed the conduct of local government affairs with respect not only to the municipalities asking to become cities, but also with respect to cities genuinely fearful of the destruction of the standards for the creation of cities and the correlative diminution of the internal revenue allotments of existing cities. The Court's commitment to provide constant and steadfast rules on the creation of cities has been inevitably weakened by the "flip-flopping" in the case that has opened the doors to rabid criticisms of the Court's failure to abide by its own internal rules and, thus, diminishing reliance on the certainty of its decisions.

4. ID.; ID.; THE PEOPLE'S SENSE OF AN ORDERLY GOVERNMENT WILL FIND IT UNACCEPTABLE IF THE SUPREME COURT, WHICH IS TASKED TO EXPRESS ENDURING VALUES THROUGH ITS JUDICIAL PRONOUNCEMENTS, IS FOUNDED ON SAND, EASILY SHIFTING WITH THE CHANGING TIDES. — Unlike that of the other two political branches whose mandates are regularly renewed through direct election, the Court's legitimacy must be painstakingly earned with every decision that puts voice to the cherished value judgments of the sovereign. The judicial function in an organized and cohesive society governed by the rule of law is placed in serious peril if the people cannot rely on the finality of court decisions to regulate their affairs. There is no reason for the Court to bend over backwards to accommodate the parties' requests for reconsideration, yet again, of the unconstitutionality of the sixteen Cityhood Laws as borne by the First Decision, especially if the result would lead to the fracturing of central tenets of the justice system. The people's sense of an orderly government will find it unacceptable if the Supreme Court, which is tasked to express enduring values through its judicial pronouncements, is founded on sand, easily shifting with the changing tides.

5. ID.; ID.; THE CASE AT BAR IS NO LONGER LIMITED TO THE QUESTION OF CONSTITUTIONALITY OF CITYHOOD LAWS, BUT WITH THE QUESTION OF CERTAINTY AND PREDICTABILITY IN THE DECISIONS OF THE COURT UNDER A DEMOCRATIC SYSTEM GOVERNED BY LAW AND RULES AND ITS ABILITY TO UPHOLD THE CONSTITUTION AND NORMATIVE

LEGISLATION SUCH AS THE LOCAL GOVERNMENT CODE. — The legal process of creating cities — as enacted and later amended by the legislature, implemented by the executive, and interpreted by the judiciary — serves as the people's North Star: certain, stable and predictable. Absent the three branches' adherence to the rule of law, our society would denigrate into uncertainty, instability and even anarchy. Indeed, the law is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy and to observe the limitations it imposes upon the exercise of the authority that it gives. No public officer is held to these highest of normative standards than those whose duties are to adjudicate the rights of the people and to articulate on enduring principles of law applicable to all. As Justice Robert Jackson eloquently expressed, the Supreme Court is not final because it is infallible; **it is infallible because it is final**. And because its decisions are final, even if faulty, there must be every energy expended to ensure that the faulty decisions are few and far between. The integrity of the judiciary rests not only upon the fact that it is able to administer justice, but also upon the perception and confidence of the community that the people who run the system have done justice. The determination of the correctness of a judicial decision turns on far more than its outcome. Rather, it turns on whether its outcome evolved from principles of judicial methodology, since the judiciary's function is not to bring about some desired state of affairs, but to find objectively the right decision by adhering to the established general system of rules. What we are dealing with in this case is no longer limited to the question of constitutionality of Cityhood Laws; we are also confronted with the question of certainty and predictability in the decisions of the Court under a democratic system governed by law and rules and its ability to uphold the Constitution and normative legislation such as the LGC. The public has unduly suffered from the repeated "flip-flopping" in this case, especially since it comes from the branch of government tasked to embody in a clear form enduring rules of civil justice that are to govern them. In expressing these truths, I echo the sentiment of a judicial colleague from a foreign jurisdiction who once said, "I write these words, not as a jeremiad, but in the belief that unless the courts adhere to the guidance of fixed principles, we will soon bring objective law to its sepulcher."

6. ID.; LOCAL GOVERNMENT; THE LOCAL GOVERNMENT CODE (LGC) PRESCRIBES THE MEANS BY WHICH CONGRESSIONAL POWER IS TO BE EXERCISED AND LOCAL GOVERNMENT UNITS ARE BROUGHT INTO EXISTENCE; FAIRNESS AND EQUITY DEMAND THAT THE CRITERIA ESTABLISHED BY THE LGC BE FAITHFULLY AND STRICTLY ENFORCED, MOST ESPECIALLY BY CONGRESS WHOSE POWER IS THE ACTUAL SUBJECT OF LEGISLATIVE DELIMITATION. — The LGC is a distinctly **normative law** that regulates the legislative power to create cities and establishes the standards by which the power is exercised. Unlike other statutes that prohibit undesirable conduct of ordinary citizens and are ends by themselves, the LGC prescribes the means by which congressional power is to be exercised and local government units are brought into legal existence. Its purpose is to avoid the arbitrary and random creation of provinces, cities and municipalities. By encapsulating the criteria for cityhood in the LGC, Congress provided objective, equally applicable and fairly ascertainable standards and reduced the emphasis on currying political favor from its members to approvingly act on the proposed cityhood law. Otherwise, cities chartered under a previous Congress can be unmade, at a whim, by a subsequent Congress, regardless of its compliance with the LGC's requirements. Fairness and equity demand that the criteria established by the LGC be faithfully and strictly enforced, most especially by Congress whose power is the actual subject of legislative delimitation.

7. ID.; ID.; ALTHOUGH CONGRESS ENJOYS THE FREEDOM TO RECONSIDER THE MINIMUM STANDARDS IMPOSED BY THE LGC, THE METHOD OF REVISING THE CRITERIA MUST BE DIRECTLY DONE THROUGH AN AMENDATORY LAW OF THE LGC, AND NOT THROUGH THE INDIRECT ROUTE OF CREATING CITIES AND EXEMPTING THEIR COMPLIANCE WITH THE ESTABLISHED AND PREVAILING STANDARDS. — In granting it the power to fix the criteria for the creation of a city, the Constitution, of course, did not preclude Congress from revising the standards imposed under the LGC. Congress shall enjoy the freedom to reconsider the minimum standards under the LGC, if future circumstances call for it. However, the method of revising the criteria must be directly done through

an amendatory law of the LGC (such as RA 9009), and not through the indirect route of creating cities and exempting their compliance with the established and prevailing standards. By indiscriminately carving out exemptions in the charter laws themselves, Congress enfeebled the normative function of the LGC on the legislative power to create cities. Taking the argument to the extreme, a single *barangay* now has the chance of being chartered as a component city without compliance with the income, territorial or population requirements under the LGC, for as long as enough Congressional support is mustered to push for its exemption — not in a general amendatory law, but through its own specific legislative charter. The selective disregard of the norms under the LGC in favor of some municipalities cannot be sanctioned in a system where the rule of law remains dominant. Unless prevented by the Court, Congress will now be emboldened to charter new cities wholesale and arbitrarily relax the stringent standards under the LGC, which it imposed on itself.

8. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY; EXCEPTIONS TO THE RULE; SUBSTANTIAL INTEREST OF JUSTICE AND SPECIAL COMPELLING REASONS; EXTREME RETROSPECT AND CAUTION MUST ACCOMPANY SUCH REVIEW. — To be sure, the Court is not precluded from rectifying errors of judgment if blind and stubborn adherence to the doctrine of immutability would involve the sacrifice of justice for technicality. The Court has previously provided for exceptions to the rule on immutability of final judgments, as follows: (1) the correction of clerical errors; (2) *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) supervening events. As exceptions to the general rule, their application to instances wherein a review of a final and executory decision is called are to be **strictly construed**. No convincing argument or extraordinary circumstance has been raised to justify and support the application of any of these exceptions to warrant a reversal of the Court's First Decision. Reversing previous, final, and executory decisions are to be done only under severely limited circumstances. Although new and unforeseen circumstances may arise in the future to justify a review of an established legal principle in a separate and distinct case, the extension of a principle must be dealt with exceptionally and cautiously.

Undeniably, the Court in the past has overturned prior decisions even on a second or third motion for reconsideration and recalled entries of judgment on the ground of **substantial interest of justice** and **special and compelling reasons**. The Court bows to "the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function." Notable reversals in recent memory include the cases involving the request for extradition of Mark Jimenez, the constitutionality of the Philippine Mining Act of 1995, the land title covering the Piedad Estate in Quezon City, the just compensation due to Apo Fruits Corporation, and the "deemed resigned" provision for public appointive officials in the recent May 2010 election. Although no prohibition exists that would prevent this Court from changing its mind in the light of compelling reasons and in the interest of substantial justice as abovedemonstrated, extreme retrospect and caution must accompany such review.

9. ID.; ID.; ID.; NO SUBSTANTIAL INTEREST OF JUSTICE OR COMPELLING REASON THAT WOULD WARRANT THE REVERSAL OF THE FIRST DECISION DECLARING THE CITYHOOD LAWS UNCONSTITUTIONAL. — In the instant case, there is no substantial interest of justice or compelling reason that would warrant the reversal of the First Decision declaring the Cityhood Laws unconstitutional. There is no injustice in preventing the conversion of the sixteen municipalities into cities **at this point in time**. In fact, justice is more equitably dispensed by the stringent application of the current legislative criteria under the Local Government Code (LGC), as amended by Republic Act No. 9009 (RA 9009), for creating cities without distinction or exception. It must be remembered that the declaration of unconstitutionality is not an absolute ban on these municipalities prohibiting them from pursuing cityhood in the future once they are able to achieve the PhP100,000,000 income requirement under RA 9009. Alternatively, their congressional representatives can also press for another amendatory law of the LGC that would include an explicit exception to the income requirement for municipalities with pending cityhood bills prior to the enactment of RA 9009. The route purportedly chosen by Congress to indirectly amend the LGC through the exemption of annual income requirements in the Cityhood Laws is improper. If Congress believes that the minority's construction of its intention in increasing the

annual income requirement is erroneous, then the legislature can show its disapproval by directly enacting amendatory legislation of the LGC. In both cases, the remedy available to the sixteen municipalities is not with the Court, but with the legislature, which is constitutionally empowered to determine the standards for the creation of a local government unit. The reasoning and substantial justice arguments expounded to reverse the initial finding of the Court that the Cityhood Laws are unconstitutional are poorly founded.

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R E S O L U T I O N

BERSAMIN, *J.*:

We hereby consider and resolve: — (*a*) the petitioners' *Motion for Leave to File Motion for Reconsideration of the Resolution of 12 April 2011*, attached to which is a *Motion for Reconsideration of the Resolution dated 12 April 2011* dated April 29, 2011 (*Motion For Reconsideration*), praying that the resolution of April 12, 2011 be reconsidered and set aside; and (*b*) the respondents' *Motion for Entry of Judgment* dated May 9, 2011.

After thorough consideration of the incidents, we deny the *Motion for Reconsideration* and grant the *Motion for Entry of Judgment.*

As its prayer for relief shows, the *Motion for Reconsideration* seeks the reconsideration, reversal, or setting aside of the resolution of April 12, 2011.[1] In turn, the resolution of April 12, 2011 denied the petitioners' *Ad Cautelam Motion for Reconsideration (of the Decision dated 15 February 2011*).[2] Clearly, the *Motion*

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[1] The prayer for relief of the *Motion for Reconsideration* states:

WHEREFORE, Petitioners most respectfully pray that the Resolution dated 12 April 2011 be forthwith RECONSIDERED, REVERSED or SET ASIDE.

[2] The dispositive portion of the resolution of April 12, 2011 reads:

WHEREFORE, the *Ad Cautelam* Motion for Reconsideration (of the Decision dated 15 February 2011) is denied with finality.

SO ORDERED.

for Reconsideration is really a *second* motion for reconsideration in relation to the resolution dated February 15, 2011.[3]

Another indicium of its being a second motion for reconsideration is the fact that the *Motion for Reconsideration* raises issues entirely identical to those the petitioners already raised in their *Ad Cautelam Motion for Reconsideration (of the Decision dated 15 February 2011)*. The following tabulation demonstrates the sameness of issues between the motions, to wit:

Motion for Reconsideration of April 29, 2011	*Ad Cautelam Motion for Reconsideration (of the Decision dated 15 February 2011)* dated March 8, 2011
I. With due respect, neither the Rules of Court nor jurisprudence allows the Honorable Court to take cognizance of Respondent Municipalities multiple motions. By doing so**, the Honorable Court therefore acted contrary to the Rules of Court and its internal procedures.**	II. The Resolution **Contravenes The 1997 Rules Of Civil Procedure And Relevant Supreme Court Issuances.**
II. Contrary to the ruling of the Honorable Court in the Assailed Resolution, the controversy involving the Sixteen (16) Cityhood laws **had long been resolved with finality;** thus, the	I. The Honorable Court Has No Jurisdiction To Promulgate The Resolution Of 15 February 2011, Because There is **No Longer Any Actual Case Or Controversy To Settle.**

[3] The dispositive portion of the resolution of February 15, 2011 says:

WHEREFORE, the Motion for Reconsideration of the "Resolution" dated August 24, 2010, dated and filed on September 14, 2010 by respondents Municipality of Baybay, *et al*. is GRANTED. The Resolution dated August 24, 2010 is REVERSED and SET ASIDE. The Cityhood Laws — Republic Acts Nos. 9389, 9390, 9391, 9392, 9393, 9394, 9398, 9404, 9405, 9407, 9408, 9409, 9434, 9435, 9436, and 9491 — are declared CONSTITUTIONAL.

SO ORDERED.

principles of **immutability of judgment and *res judicata*** are applicable and operate to deprive the Honorable Court of jurisdiction.	III. The Resolution Undermines The Judicial System In Its Disregard Of The Principles Of ***Res Judicata*** **And The Doctrine of Immutability of Final Judgments.**
III. Contrary to the Assailed Resolution of the Honorable Court, the sixteen (16) Cityhood laws neither repealed nor amended the Local Government Code. The Honorable Court committed an error when it failed to rule in the Assailed Resolution that the **Sixteen (16) Cityhood Laws violated Article X, Sections 6 and 10 of the Constitution.**	IV. The Resolution Erroneously Ruled That The Sixteen (16) Cityhood Bills Do Not Violate **Article X, Sections 6 and 10 Of The 1987 Constitution.** V. The Sixteen (16) Cityhood Laws Violate The Equal Protection Clause Of The Constitution And The Right Of Local Government Units To A **Just Share In The National Taxes.**
IV. With due respect, the constitutionality of R.A. 9009 is not an issue in this case. It was error on the part of the Honorable Court to consider the law arbitrary.	

That Issue No. IV (*i.e.*, the constitutionality of Republic Act No. 9009) appears in the *Motion for Reconsideration* but is not found in the *Ad Cautelam Motion for Reconsideration (of the Decision dated 15 February 2011)* is of no consequence, for the constitutionality of R.A. No. 9009 is neither relevant nor decisive in this case, the reference to said legislative enactment being only for purposes of discussion.

The *Motion for Reconsideration*, being a second motion for reconsideration, cannot be entertained. As to that, Section 2[4]

[4] Section 2. *Second motion for reconsideration.* — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

of Rule 51 of the *Rules of Court* is unqualified. The Court has firmly held that a second motion for reconsideration is a prohibited pleading,[5] and only for extraordinarily persuasive reasons and only after an express leave has been first obtained may a second motion for reconsideration be entertained.[6] The restrictive policy *against* a second motion for reconsideration has been re-emphasized in the recently promulgated *Internal Rules of the Supreme Court*, whose Section 3, Rule 15 states:

> Section 3. *Second motion for reconsideration.* — **The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court *en banc* upon a vote of at least two-thirds of its actual membership.** There is reconsideration "in the higher interest of justice" when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. **A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.**
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> In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court *En Banc*.

We observe, too, that the prescription that a second motion for reconsideration "can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration" even renders the denial of the petitioners' *Motion for Reconsideration* more compelling. As the resolution of April 12, 2011 bears out,[7] the ruling sought to be reconsidered became final *by the Court's express declaration*. Consequently, the denial of the *Motion for Reconsideration* is immediately warranted.

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[5] *Securities and Exchange Commission v. PICOP Resources, Inc.*, 566 SCRA 451 (2008); *APO Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, April 5, 2011; *Ortigas and Company Limited Partnership v. Velasco*, 254 SCRA 234.

[6] *Ortigas and Company Limited Partnership v. Velasco*, *supra*.

[7] *Supra*, note 2.

Still, the petitioners seem to contend that the Court had earlier entertained and granted the respondents' own second motion for reconsideration. There is no similarity between then and now, however, for the Court *en banc* itself unanimously declared in the resolution of June 2, 2009 that the respondents' second motion for reconsideration was "no longer a prohibited pleading."[8] No similar declaration favors the petitioners' *Motion for Reconsideration*.

Finally, considering that the petitioners' *Motion for Reconsideration* merely rehashes the issues previously put forward, particularly in the *Ad Cautelam Motion for Reconsideration (of the Decision dated 15 February 2011*), the Court, having already passed upon such issues with finality, finds no need to discuss the issues again to avoid repetition and redundancy.

Accordingly, the finality of the resolutions upholding the constitutionality of the 16 Cityhood Laws now absolutely warrants the granting of respondents' *Motion for Entry of Judgment*.

WHEREFORE, the Court denies the petitioners' *Motion for Leave to File Motion for Reconsideration of the Resolution of 12 April 2011* and the attached *Motion for Reconsideration of the Resolution of 12 April 2011*; grants the respondents' *Motion for Entry of Judgment* dated May 9, 2011; and directs the Clerk of Court to forthwith issue the Entry of Judgment in this case.

No further pleadings or submissions by any party shall be entertained.

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[8] The resolution of June 2, 2009 pertinently declared:

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In the present case, the Court voted on the second motion for reconsideration filed by the respondent cities. In effect, the Court allowed the filing of the second motion for reconsideration. Thus, the second motion for reconsideration was no longer a prohibited pleading. However, for lack of the required number of votes to overturn the 18 November 2009 Decision and 31 March 2009 Resolution, the Court denied the second motion for reconsideration in its 28 April 2009 Resolution.

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SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-de Castro, Abad, Perez, and *Mendoza, JJ.,* concur.

Carpio, J., see dissenting opinion.

Brion, J., maintains his dissent.

Peralta, J., maintains his vote.

Villarama, Jr., J., joins *J.* Carpio in his dissent.

Sereno, J., see dissenting opinion, joins main dissent of *J.* Carpio.

del Castillo, J., no part.

DISSENTING OPINION

CARPIO, *J.*:

The majority decision upheld the constitutionality of the Cityhood Laws because (1) of the pendency of the conversion bills during the 11th Congress; and (2) compliance with the requirements of the Local Government Code ***prior*** to its amendment by Republic Act No. 9009.

I reiterate my dissent.

I.

The Cityhood Laws violate Section 10, Article X of the Constitution.

Section 10, Article X of the 1987 Constitution provides:

> **No** province, **city**, municipality, or *barangay* **shall be created,** divided, merged, abolished or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected. (Emphasis supplied)

The Constitution is clear. The creation of local government units must follow the **criteria established in the Local Government Code itself** and not in any other law. There is only one Local Government Code.[1] To avoid discrimination and ensure uniformity and equality, the Constitution expressly requires Congress to stipulate in the Local Government Code itself all the criteria necessary for the creation of a city, including the conversion of a municipality into a city. **Congress cannot write such criteria in any other law, like the Cityhood Laws.**

Notably, each Cityhood Law provides in its Separability Clause that if any of its provisions is "**inconsistent with the Local Government Code**," the other consistent provisions "**shall continue to be in full force and effect.**" **The clear and inescapable implication is that any provision in each Cityhood Law that is "inconsistent with the Local Government Code" has no force and effect – in short, void and ineffective.** Each Cityhood Law expressly and unequivocally acknowledges the superiority of the Local Government Code, and that **in case of conflict, the Local Government Code shall prevail over the Cityhood Law.** The clear intent and express language of the Cityhood Laws is for these laws to conform to the Local Government Code and not the other way around.

Moreover, Congress, in providing in the Separability Clause that the Local Government Code shall prevail over the Cityhood Laws, treats the Cityhood Laws as separate and distinct from the Local Government Code. In other words, **the Cityhood Laws *do not form integral parts* of the Local Government Code but are separate and distinct laws**. There is therefore no question that the Cityhood Laws are laws ***other*** than the Local Government Code. As such, the Cityhood Laws cannot stipulate an exception from the requirements for the creation of cities, prescribed in the Local Government Code, without running afoul of the explicit mandate of Section 10, Article X of the 1987 Constitution.

Contrary to the faulty conclusion of the majority, the Cityhood Laws do not amend the Local Government Code. The Legislature

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[1] Republic Act No. 7160, as amended.

never intended the Cityhood Laws to amend the Local Government Code. Nowhere in the plain language of the Cityhood Laws can this interpretation be discerned. Neither the title nor the body of the Cityhood Laws sustains such conclusion. Simply put, there is absolutely nothing in the Cityhood Laws to support the majority decision that the Cityhood Laws **amended** the Local Government Code.

II.

The Cityhood Laws violate the equal protection clause.

There is no substantial distinction between municipalities with pending cityhood bills in the 11th Congress and municipalities that did not have pending bills. The mere pendency of a cityhood bill in the 11th Congress is not a material difference to distinguish one municipality from another for the purpose of the income requirement. The pendency of a cityhood bill in the 11th Congress does not affect or determine the level of income of a municipality. Municipalities with pending cityhood bills in the 11th Congress might even have lower annual income than municipalities that did not have pending cityhood bills. In short, the classification criterion — mere pendency of a cityhood bill in the 11th Congress — is not rationally related to the purpose of the law which is to prevent fiscally non-viable municipalities from converting into cities.

The fact of pendency of a cityhood bill in the 11th Congress limits the exemption to a specific condition existing at the time of passage of RA 9009. That specific condition will never happen again. This violates the requirement that a valid classification must not be limited to existing conditions only.

In the same vein, the exemption provision in the Cityhood Laws gives the 16 municipalities a unique advantage based on an arbitrary date — the filing of their cityhood bills before the end of the 11th Congress — as against all other municipalities that want to convert into cities after the effectivity of RA 9009.

Further, limiting the exemption only to the 16 municipalities violates the requirement that the classification must apply to all similarly situated. Municipalities with the same income as

the 16 respondent municipalities cannot convert into cities, while the 16 respondent municipalities can. Clearly, as worded the exemption provision found in the Cityhood Laws, even if it were written in Section 450 of the Local Government Code, is unconstitutional for violation of the equal protection clause.

III.

Respondent municipalities must comply with the ₱100 million income requirement under the prevailing LGC.

RA No. 9009 amended the Local Government Code precisely because the criteria in the old Local Government Code were no longer sufficient. In short, RA No. 9009 repealed the old income requirement of ₱20 million, a requirement that no longer exists in our statute books. Compliance with the old income requirement is compliance with a repealed, dead, and non-existent law – a totally useless, futile, and empty act. Worse, compliance with the old requirement is an ***outright violation*** of the Constitution which expressly commands that "**no x x x city x x x shall be created x x x except in accordance with the criteria established in the local government code**." Therefore, respondent municipalities in order to validly convert into cities must comply with the ₱100 million income requirement under the prevailing Local Government Code, as amended by RA 9009, and not with the old ₱20 million income requirement. Otherwise, such compliance with the old ₱20 million income requirement is void for being unconstitutional.

There must be strict compliance with the express command of the Constitution that "**no city x x x shall be created x x x except in accordance with the criteria established in the local government code.**" Substantial compliance is insufficient because it will discriminate against all other cities that were created **before and after the enactment** of the Cityhood Laws in strict compliance with the criteria in the Local Government Code, as amended by RA No. 9009. The conversion of municipalities into new cities means an increase in the Internal Revenue Allotment of the former municipalities and a **corresponding decrease** in the Internal Revenue Allotment of all other existing cities. There must be strict, not only substantial, compliance

with the constitutional requirement because the economic lifeline of existing cities may be seriously affected.

IV.

The increased income requirement of ₱100 million is neither arbitrary nor difficult to comply.

According to the majority, "the imposition of the income requirement of ₱100 million from local sources under R.A. No. 9009 was arbitrary. x x x no research or empirical data buttressed the figure. Nor was there proof that the proposal took into account the after-effects that were likely to arise."

This is glaring error.

The Legislature, in enacting RA No. 9009, is not required by the Constitution to show the courts data like inflation figures to support the increased income requirement. As long as the increased income requirement is not impossible to comply, such increase is a policy determination involving the wisdom of the law, which exclusively lies within the province of the Legislature. When the Legislature enacts laws increasing taxes, tax rates, or capital requirements for businesses, the Court cannot refuse to apply such laws on the ground that there is no economic justification for such increases. Economic, political or social justifications for the enactment of laws go into the wisdom of the law, outside the purview of judicial review. This Court cannot refuse to apply the law unless the law violates a specific provision of the Constitution. There is plainly nothing unconstitutional in increasing the income requirement from ₱20 million to ₱100 million because such increase does not violate any express or implied provision of the Constitution.

V.

Failure of 59 existing cities to post ₱100 million annual income does not render the ₱100 million income requirement difficult to comply.

Suffice it to state that there is no Constitutional or statutory requirement for the 59 ***existing*** cities to comply with the ₱100 million income requirement. **Obviously, these cities were already**

cities prior to the amendment of the Local Government Code providing for the increased income requirement of ₱100 million. In other words, at the time of their creation, these cities have complied with the criteria prescribed under the old Local Government Code for the creation of cities, and thus are not required to comply with the ₱100 million income requirement of the prevailing Local Government Code. It is utterly misplaced and grossly erroneous to cite the "non-compliance" by the 59 existing cities with the increased income requirement of ₱100 million to conclude that the ₱100 million income requirement is arbitrary and difficult to comply.

Moreover, as stated, the increased income requirement of ₱100 million is neither unconstitutional nor unlawful. Unless the ₱100 million income requirement violates a provision of the Constitution or a law, such requirement for the creation of a city must be strictly complied with. Any local government unit applying for cityhood, whether located in or outside the metropolis and whether within the National Capital Region or not, must meet the ₱100 million income requirement prescribed by the prevailing Local Government Code. There is absolutely nothing unconstitutional or unlawful if the ₱100 million income requirement is easily complied with by local government units within or near the National Capital Region. The majority's groundless and unfair discrimination against these metropolis-located local government units must necessarily fail.

VI.

The Cityhood Laws violate Section 6, Article X of the Constitution.

Uniform and non-discriminatory criteria as prescribed in the Local Government Code are essential to implement a fair and equitable distribution of national taxes to all local government units. Section 6, Article X of the Constitution provides:

> Local government units shall have a **just share**, as determined by law, in the national taxes which shall be automatically released to them. (Emphasis supplied)

If the criteria in creating local government units are not uniform and discriminatory, there can be no fair and just distribution of the national taxes to local government units.

A city with an annual income of only ₱20 million, all other criteria being equal, should not receive the same share in national taxes as a city with an annual income of ₱100 million or more. The criteria of land area, population and income, as prescribed in Section 450 of the Local Government Code, must be strictly followed because such criteria, prescribed by law, are material in determining the "just share" of local government units in national taxes. Since the Cityhood Laws do not follow the income criterion in Section 450 of the Local Government Code, they prevent the fair and just distribution of the Internal Revenue Allotment in violation of Section 6, Article X of the Constitution.

As pointed out by petitioners, "respondent municipalities have a total population equivalent to that of Davao City only, or around 1.3 million people. Yet, the IRA that pertains to the 16 municipalities (₱4,019,776,072) is more than double that for Davao City (₱1,874,175,271). x x x As a result, the per capita IRA alloted for the individual denizen of Davao is even less than half of the average per capita IRA of the inhabitants of the sixteen (16) municipalities (₱1,374.70 divided by ₱3,117.24)."

This indisputable fact vividly reveals the economic inequity that will inevitably result from the unjust allocation of the IRA as a consequence of the conversion of respondent municipalities into cities. Clearly, if the existing cities' share in the Internal Revenue Allotment is unreasonably reduced, it is possible, even expected, that these cities may have to lay-off workers and abandon projects, greatly hampering, or worse paralyzing, the delivery of much needed public services in their respective territorial jurisdictions.

VII.

Conclusion

The Constitution expressly requires Congress to stipulate in the Local Government Code itself all the criteria necessary for the creation of a city, including the conversion of a municipality

into a city. To avoid discrimination and ensure uniformity and equality, such criteria cannot be embodied in any other law except the Local Government Code. In this case, the Cityhood Laws, which are unmistakably laws other than the Local Government Code, provide an exemption from the increased income requirement for the creation of cities under Section 450 of the Local Government Code, as amended by RA No. 9009. Clearly, the Cityhood Laws contravene the letter and intent of Section 10, Article X of the Constitution. In addition, the Cityhood Laws violate the equal protection clause and Section 6, Article X of the Constitution on the fair and equitable distribution of national taxes to all local government units. Without any doubt, the Cityhood Laws must be striken down for being unconstitutional.

Accordingly, I vote to **GRANT** the motion for reconsideration of the League of Cities of the Philippines.

DISSENTING OPINION

SERENO, *J.*:

"*If changing judges changes laws,*
it is not even clear what law is."

- Richard A. Posner[1]

I maintain my dissent that the sixteen Cityhood Laws are unconstitutional. In questioning the Court's latest Resolution,[2] petitioners have raised concerns over the "highly irregular and unprecedented" acts of entertaining several motions for reconsideration.[3] In response to these concerns, I wish to expound on the effects of the "flip-flopping" decisions on the Court's role in our democratic system and its decision-making process,

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[1] Posner, Richard A., *HOW JUDGES THINK* (2008), at 1.

[2] Resolution dated 12 April 2011.

[3] Petitioners' Motion for Reconsideration dated 29 April 2011, para. 1.6, at 7.

in order that it may "serve to bulwark the fortifications of an orderly government of laws."[4]

Our system of democracy is committed irrevocably to a government of laws,[5] and not of men.[6] Laws give witness to society's moral values[7] and are the depositories of what the sovereign as a whole has agreed to uphold as the minimum standards of conduct that will govern relationships and transactions within that society. In a representative democracy, the Filipino people, through their elected representatives, deliberate, distill and make moral judgments, which are crystallized into written laws that are made public, accessible and binding to all.[8] Perhaps

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[4] "In concluding this tedious and disagreeable task, may we not be permitted to express the hope that this decision may **serve to bulwark the fortifications of an orderly government of laws** and to protect individual liberty from illegal encroachment." (*Villavicencio v. Lukban*, G.R. No. L-14639, 25 March 1919, 39 Phil. 778; emphasis supplied)

[5] Dissenting Opinion, Justice Paras, *Austria v. Amante*, G.R. No. L-959, 09 January 1948, 79 Phil. 780.

[6] "The Government of the Philippine Islands is essentially a Government of laws and not of men." (*In Re: Mulloch Dick*, G.R. No. L-13862, 16 April 1918, 38 Phil. 41)

[7] "**The laws enacted become expressions of public morality**. As Justice Holmes put it, '(t)he law is the witness and deposit of our moral life.' 'In a liberal democracy, the law reflects social morality over a period of time.' Occasionally though, a disproportionate political influence might cause a law to be enacted at odds with public morality or legislature might fail to repeal laws embodying outdated traditional moral views. Law has also been defined as 'something men create in their best moments to protect themselves in their worst moments.' . . . Law deals with the minimum standards of human conduct while morality is concerned with the maximum. . . . Law also serves as 'a helpful starting point for thinking about a proper or ideal public morality for a society' in pursuit of moral progress." (*Estrada v. Escritor*, A.M. No. P-02-1651, 04 August 2003, 408 SCRA 1)

[8] "In a democracy, this common agreement on political and moral ideas is distilled in the public square. Where citizens are free, every opinion, every prejudice, every aspiration, and every moral discernment has access to the public square where people deliberate the order of their life together. Citizens are the bearers of opinion, including opinion shaped by, or espousing religious belief, and these citizens have equal access to the public square. In this representative democracy, the state is prohibited from determining which

no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner.[9]

Obedience to the rule of law forms the bedrock of our system of justice.[10] Once the sovereign people's "soft" moral choices are hardened through the constitutionally mandated legislative process,[11] statutory laws perform an equalizing function of imposing a knowable standard of conduct or behavior to which all members of society must conform to — a social contract which everyone regardless of class, sex or religion is bound.[12] Legislative enactments are ordinarily prospective and general

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convictions and moral judgments may be proposed for public deliberation. Through a constitutionally designed process, the people deliberate and decide. Majority rule is a necessary principle in this democratic governance. Thus, when public deliberation on moral judgments is finally crystallized into law, the laws will largely reflect the beliefs and preferences of the majority, *i.e.,* the mainstream or median groups." (*Estrada v. Escritor*, *id*.)

[9] *Boddie v. Connecticut*, 401 U.S. 371, 91 S.Ct. 780, 28 L.Ed.2d 113 (1971).

[10] *People v. Veneracion*, G.R. Nos. 119987-88, 12 October 1995, 319 Phil. 364.

[11] CONSTITUTION, Art. VI, Sec. 26 and 27.

[12] "For when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority: for that which acts any community, being only the consent of the individuals of it, and it being necessary to that which is one body to move one way; it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority: or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it, agreed that it should; and so every one is bound by that consent to be concluded by the majority. And therefore we see, that in assemblies, empowered to act by positive laws, where no number is set by that positive law which empowers them, the act of the majority passes for the act of the whole, and of course determines, as having, by the law of nature and reason, the power of the whole." (Locke, John. *Second Treatise on Civil Government*, cited in footnote no. 47 of Chief Justice Reynato Puno's Concurring Opinion in *Province of North Cotabato v. GRP Peace Panel on Ancestral Domain*, 568 SCRA 402).

in character insofar as they prescribe limitations on an individual's future conduct. Under the rule of law,[13] ordinary people can reasonably assume that another person's future conduct will be in observance of the laws and can conceivably expect that any deviation therefrom will be punished accordingly by responsible authorities. Thus, written constitutions and statutory laws allow citizens a minimum confidence in a world of uncertainty:

> Through constitutionalism we placed limits on both our political institutions and ourselves, hoping that democracies, historically always turbulent, chaotic, and even despotic, might now become restrained, principled, thoughtful and just. So we bound ourselves over to a law that we made and promised to keep. And though a government of laws did not displace governance by men, it did mean that now men, democratic men, would try to live by their word.[14]

As man-made creations, however, laws are not always entirely encompassing, as future conditions may change – conditions that could not have been perceived or accounted for by the legislators. Actual situations may arise between two conflicting claims by specific parties with differing interpretations of the law. In those instances in which a gray area or an unintended gap exists in the implementation or execution of laws, the judicial department is charged with the duty of determining the limitations that the law places upon all actions of individuals.[15] Hence, the court's primary adjudicatory function is to mark the metes and bounds of the law in specific areas of application, as well as to pass judgment on the competing positions in a case properly brought before it.

The Court not only functions to adjudicate rights among the parties, but also serves the purpose of a supreme tribunal of

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[13] The rule of law has likewise been described as "a defeasible entitlement of persons to have their behavior governed by laws that are publicly fixed in advance." (Stephen R. Munzer, *A Theory of Retroactive Legislation*, 61 Tex. L. Rev. 425 [1982] at 438)

[14] Separate Opinion, Justice Santiago Kapunan, *Estrada v. Desierto*, G.R. Nos. 146710-15 & 146738, 02 March 2001, 356 SCRA 108.

[15] Separate Opinion, Justice Reynato Puno in *IBP v. Zamora*, G.R. No. 141284, 15 August 2000, 338 SCRA 81.

last resort that establishes uniform rules of civil justice.[16] Jurisprudence "narrows the field of uncertainty"[17] in the application of an unclear area of the law. The certainty of judicial pronouncement lends respect for and adherence to the rule of law — "the idea that all citizens and all organs of government are bound by rules fixed in advance, which make it possible to foresee how the coercive powers of government will be used, whether in its own interests or in aid of citizens who call on them, in particular circumstances."[18] The Court's historic role of pronouncing what the law is between the parties[19] is the cornerstone of a government of laws, and not of men.[20] Justice Antonin Scalia of the United States Supreme Court expounded on the objectives of uniformity and predictability of judicial decisions, to wit:

> This last point suggests another obvious advantage of establishing as soon as possible a clear, general principle of decision: **predictability. Even in simpler times uncertainty has been regarded as incompatible with the Rule of Law. Rudimentary**

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[16] ". . . Laws are a dead letter without courts to expound and define their true meaning and operation. . . . Their true import, as far as respects individuals, must, like all other laws, be ascertained by judicial determinations. **To produce uniformity in these determinations, they ought to be submitted, in the last resort, to one supreme tribunal.** . . . There are endless diversities in the opinions of men. We often see not only different courts but the judges of the same court differing from each other. To avoid the confusion which would unavoidably result from the contradictory decisions of a number of independent judicatories, **all nations have found it necessary to establish one court paramount to the rest, possessing a general superintendence, and authorized to settle and declare in the last resort a uniform rule of civil justice**." (Alexander Hamilton, Federalist Paper No. 22; emphasis supplied)

[17] "Still, the tendency of the law must always be to narrow the field of uncertainty." (Justice Oliver Wendell Holmes, *THE COMMON LAW* at 53)

[18] J. D. Heydon, *Limits to the Powers of Ultimate Appellate Courts*, L.Q.R. 2006, 122(JUL), 399-425, 404, citing *Planned Parenthood of South Eastern Pennsylvania v. Casey*, 505 U.S. 833, 854 (1992).

[19] *Abueva v. Wood*, G.R. No. L-21327, 14 January 1924, 45 Phil. 612.

[20] Separate Opinion, Justice Reynato Puno in *IBP v. Zamora*, *supra*. Note 12.

justice requires that those subject to the law must have the means of knowing what it prescribes. It is said that one of emperor Nero's nasty practices was to post his edicts high on the columns so that they would be harder to read and easier to transgress. **As laws have become more numerous, and as people have become increasingly ready to punish their adversaries in the courts, we can less and less afford protracted uncertainty regarding what the law may mean**. Predictability, or as Llewellyn put it, "reckonability," is a needful characteristic of any law worthy of the name. There are times when even a bad rule is better than no rule at all.[21] (Emphasis supplied)

Certainty and "reckonability" in the law are the major objectives of the legal system, and judicial decisions serve the important purpose of providing stability to the law and to the society governed by that law.[22] If we are to subscribe to Justice Oliver Wendell Holmes' theory of a bad man,[23] then law provides reasonable predictability in the consequences of one's actions relative to the law, if performed in a just and orderly society. As judicial decisions form part of the law of the land,[24] there is a strong public interest in stability and in the orderly conduct of our affairs, an end served by a consistent course of adjudication.[25] Thus, once a court has decided upon a rule of law, "that decision should continue to govern the same issues in subsequent stages"

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[21] Justice Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175 (1989) at 1179.

[22] Dissenting Opinion, Justice Conchita Carpio Morales, *La Bugal B'laan Tribal Association, et al. v. Ramos*, G.R. No. 127882, 01 February 2005.

[23] "If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience." (Justice Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 Harv. L. R. 457 [1897])

[24] Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines. (CIVIL CODE, Art. 8; *Floresca v. Philex Mining Corporation*, G.R. No. L-30642, 30 April 1985, 136 SCRA 141)

[25] Concurring Opinion, Justice John Paul Stevens, *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 780-781, 106 S.Ct. 2169 (1986).

of the same case[26] and thus offers to the people some measure of conviction about the legal effects of their actions. In the absence of extraordinary circumstances, courts should be loathe to revisit prior decisions.[27]

In the instant case, the public confusion, sown by the pendulum swing of the Court's decisions, has yielded unpredictability in the judicial decision-making process and has spawned untold consequences upon the public's confidence in the enduring stability of the rule of law in our jurisdiction.

The Court has been entrusted by the sovereign with the duty of voicing out and sharpening with finality society's collective ideals in its written decisions. Yet, if cases are litigated in perpetuity, and judgments are clouded with continuous uncertainty, the public's confidence in the stability of judicial precedents promulgated by the Court would be greatly diminished. In this case, the Court has reviewed and reconsidered, no less than five times already,[28] the constitutionality of the sixteen Cityhood Laws.[29] During this time, the public has been made

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[26] *Jano Justice Systems, Inc. v. Burton*, F.Supp.2d, 2010 WL 2012941 (C.D.Ill.) (2010), citing *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988).

[27] *Jano Justice Systems, Inc. v. Burton, id.*

[28] In a little over three years, the Court's decisions in the instant case have swung like a pendulum from unconstitutionality to validity. Beginning with the First Decision dated 18 November 2008, the Court initially found the subject sixteen Cityhood Laws as unconstitutional, but reversed itself in the Second Decision dated 21 December 2009, where the laws were declared valid. However, the Court had a change of heart and reinstated its earlier finding of unconstitutionality in the Third Decision (SC Resolution dated 24 August 2010, penned by Justice Antonio Carpio), but less than a year later, it overturned the last ruling by again declaring the Cityhood Laws constitutional in the Fourth Decision (SC Resolution dated 15 February 2011, penned by Justice Lucas Bersamin). The Fifth Decision and latest Resolution of the Court denied with finality the *Ad Cautelam* Motion for Reconsideration and reiterated that the Cityhood Laws were constitutional (SC Resolution dated 12 April 2011 penned again by Justice Bersamin).

[29] The sixteen Cityhood Laws consist of Republic Acts Nos. 9389-94, 9398, 9404-05, 9407-09, 9434-36 and 9491.

to endure an inordinate degree of indecision that has disturbed the conduct of local government affairs with respect not only to the municipalities asking to become cities, but also with respect to cities genuinely fearful of the destruction of the standards for the creation of cities and the correlative diminution of the internal revenue allotments of existing cities. The Court's commitment to provide constant and steadfast rules on the creation of cities has been inevitably weakened by the "flip-flopping" in the case that has opened the doors to rabid criticisms of the Court's failure to abide by its own internal rules and, thus, diminishing reliance on the certainty of its decisions.

To be sure, the Court is not precluded from rectifying errors of judgment if blind and stubborn adherence to the doctrine of immutability[30] would involve the sacrifice of justice for technicality.[31] The Court has previously provided for exceptions to the rule on immutability of final judgments, as follows: (1) the correction of clerical errors;[32] (2) *nunc pro tunc* entries which cause no prejudice to any party;[33] (3) void

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[30] "A decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact or law and whether it will be made by the court that rendered it or by the highest court of the land." (*Labao v. Flores*, G.R. No. 187984, 15 November 2010, 634 SCRA 723, citing *Peña v. Government Service Insurance System*, G.R. No. 159520, 19 September 2006, 502 SCRA 383, 404)

[31] *Republic v. Ballocanag*, G. R. No. 163794, 28 November 2008, 572 SCRA 436, citing *Heirs of Maura So v. Obliosca*, G.R. No. 147082, 28 January 2008, 542 SCRA 406, 421-422.

[32] *FGU Insurance Corporation v. RTC of Makati*, G.R. No. 161282, 23 February 2011, citing *Villa v. GSIS*, G.R. No. 174642, 31 October 2009.

[33] "The object of a judgment *nunc pro tunc* is not the rendering of a new judgment and the ascertainment and determination of new rights, but is one placing in proper form on the record, the judgment that had been previously rendered, to make it speak the truth, so as to make it show what the judicial action really was, not to correct judicial errors, such as to render a judgment which the court ought to have rendered, in place of the one it did erroneously render, nor to supply nonaction by the court, however erroneous the judgment may have been." (*Mocorro v. Ramirez*, G.R. No. 178366, 28 July 2008, 560 SCRA 362, citing *Briones-Vasquez v. Court of Appeals*, 450 SCRA 482, 492 [2005]).

judgments;[34] and (4) supervening events.[35] As exceptions to the general rule, their application to instances wherein a review of a final and executory decision is called are to be **strictly construed**.[36] No convincing argument or extraordinary circumstance has been raised to justify and support the application of any of these exceptions to warrant a reversal of the Court's First Decision. Reversing previous, final, and executory decisions are to be done only under severely limited circumstances. Although new and unforeseen circumstances may arise in the future to justify a review of an established legal principle in a separate and distinct case, the extension of a principle must be dealt with exceptionally and cautiously.

Undeniably, the Court in the past has overturned prior decisions even on a second or third motion for reconsideration and recalled entries of judgment on the ground of **substantial interest of justice** and **special and compelling reasons**.[37] The Court bows

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[34] "Void judgments may be classified into two groups: those rendered by a court without jurisdiction to do so and those obtained by fraud or collusion." (*Legarda v. Court of Appeals*, G.R. No. 94457, 16 October 1997, 280 SCRA 642)

[35] "One of the exceptions to the principle of immutability of final judgments is the existence of supervening events. Supervening events refer to facts which transpire *after* judgment has become final and executory or to new circumstances which developed *after* the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time." (*Natalia Realty, Inc. v. Court of Appeals*, G.R. No. 126462, 12 November 2002, 391 SCRA 370)

[36] "Under the rules of statutory construction, exceptions, as a general rule, should be strictly but reasonably construed." (*Commissioner of Internal Revenue v. CA*, G.R. No. 107135, 23 February 1999, 303 SCRA 508)

[37] "… In the past, however, we have recognized exceptions to this rule by reversing judgments and recalling their entries in the interest of substantial justice and where special and compelling reasons called for such actions."

"Notably, in *San Miguel Corporation v. National Labor Relations Commission*, *Galman v. Sandiganbayan*, *Philippine Consumers Foundation v. National Telecommunications Commission*, and *Republic v. de los Angeles*, we reversed our judgment on the second motion for reconsideration, while in *Vir-Jen Shipping and Marine Services v. National Labor Relations Commission*, we did so on a third motion for reconsideration. In *Cathay*

to "the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function."[38] Notable reversals in recent memory include the cases involving the request for extradition of Mark Jimenez,[39] the constitutionality of the Philippine Mining Act of 1995,[40] the land title covering the Piedad Estate in Quezon City,[41] the just compensation due to Apo Fruits Corporation,[42] and the "deemed resigned" provision

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Pacific v. Romillo and *Cosio v. de Rama*, we modified or amended our ruling on the second motion for reconsideration. More recently, in the cases of *Muñoz v. Court of Appeals*, *Tan Tiac Chiong v. Hon. Cosico*, *Manotok IV v. Barque*, and *Barnes v. Padilla*, we recalled entries of judgment after finding that doing so was in the interest of substantial justice." (*Apo Fruits Corporation v. Landbank of the Philippines*, G.R. No. 164195, 12 October 2010, 632 SCRA 727)

[38] Dissenting Opinion, Justice Louis Brandeis, *Burnet v. Coronado Oil & Gas, Co.*, 285 U.S. 393, 407-408 (1932).

[39] In *Secretary of Justice v. Lantion*, G. R. No. 139645, the Court first ordered the Secretary of Justice to furnish private respondent Mark Jimenez, copies of the extradition request and its supporting papers, and to give him a reasonable period within which to file his comment with supporting evidence. (Decision dated 18 January 2000) The Court subsequently reversed itself and declared that private respondent is bereft of the right to notice and hearing during the *evaluation stage* of the extradition process. (Decision 17 October 2000)

[40] In *La Bugal B'laan Tribal Association v. Ramos*, G.R. No. 127882, the Court first declared some of the provisions of Republic Act No. 7942 (Philippine Mining Act of 1995) unconstitutional and void (Decision dated 27 January 2004); but on a motion for reconsideration the ruling was later reversed and the mining law was declared constitutional (Resolution dated 01 December 2004).

[41] In *Heirs of Manotok v. Barque*, G.R. No. 162335 & 162605, the Court's First Division initially affirmed the cancellation of the Manotok title over the friar land and ordered that the title be reconstituted in favor of the Homer L. Barque, Sr. (Decision dated 12 December 2005) After the Decision was recalled and the case remanded to the Court of Appeals for reception of evidence (Resolution dated 18 December 2008), the Court *en banc* nullified the titles of Manotok and Barque and declared the land as legally belonging to the national government. (Decision dated 24 August 2010)

[42] In *Apo Fruits Corporation v. Landbank of the Philippines*, G.R. No. 164105, the Court's Third Division ordered Landbank to pay Apo Fruits Corporation and Hijo Plantation to pay ₱1,383,179,000 with 12% legal interest as just compensation for the two companies' expropriated lands. (Decision

for public appointive officials in the recent May 2010 election.[43] Although no prohibition exists that would prevent this Court from changing its mind in the light of compelling reasons and in the interest of substantial justice as abovedemonstrated, extreme retrospect and caution must accompany such review.

In the instant case, there is no substantial interest of justice or compelling reason that would warrant the reversal of the First Decision declaring the Cityhood Laws unconstitutional. There is no injustice in preventing the conversion of the sixteen municipalities into cities **at this point in time**. In fact, justice is more equitably dispensed by the stringent application of the current legislative criteria under the Local Government Code (LGC),[44] as amended by Republic Act No. 9009 (RA 9009), for creating cities without distinction or exception. It must be remembered that the declaration of unconstitutionality is not an absolute ban on these municipalities prohibiting them from pursuing cityhood in the future once they are able to achieve the PhP100,000,000 income requirement under RA 9009.[45] Alternatively, their congressional representatives can also press

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dated 06 February 2007) Landbank's motion for reconsideration was partially granted and the award of legal interest was deleted (Decision dated 19 December 2007 and 30 April 2008), which was affirmed by the Court *en banc*. (Decision dated 04 December 2009) However, the award of legal interest was reinstated later on. (Decision dated 12 October 2010)

[43] In *Quinto v. COMELEC*, G. R. No. 189698, the Court first declared unconstitutional the provision in the Omnibus Election Code, as amended by Republic Act No. 9369, considering public appointive officials as *ipso facto* resigned from the filing of their certificate of candidacy. (Decision 01 December 2009) The Court again reversed itself and declared the same provision as "not unconstitutional." (Resolution dated 22 February 2010)

[44] Republic Act No. 7160, Sec. 450.

[45] "*Requisites for Creation.* — (a) A municipality or a cluster of *barangays* may be converted into a component city if it has a locally generated average annual income, as certified by the Department of Finance, of **at least One hundred million pesos (₱100,000,000.00) for the last two (2) consecutive years based on 2000 constant prices**, and if it has either of the following requisites:

(i) a contiguous territory of at least one hundred (100) square kilometers, as certified by the Land Management Bureau; or

for another amendatory law of the LGC that would include an explicit exception to the income requirement for municipalities with pending cityhood bills prior to the enactment of RA 9009. The route purportedly chosen by Congress to indirectly amend the LGC through the exemption of annual income requirements in the Cityhood Laws is improper. If Congress believes that the minority's construction of its intention in increasing the annual income requirement is erroneous, then the legislature can show its disapproval by directly enacting amendatory legislation of the LGC. In both cases, the remedy available to the sixteen municipalities is not with the Court, but with the legislature, which is constitutionally empowered to determine the standards for the creation of a local government unit. The reasoning and substantial justice arguments expounded to reverse the initial finding of the Court that the Cityhood Laws are unconstitutional are poorly founded.

The LGC is a distinctly **normative law** that regulates the legislative power to create cities and establishes the standards by which the power is exercised. Unlike other statutes that prohibit undesirable conduct of ordinary citizens and are ends by themselves, the LGC prescribes the means by which congressional power is to be exercised and local government units are brought into legal existence. Its purpose is to avoid the arbitrary and random creation of provinces, cities and municipalities. By encapsulating the criteria for cityhood in the LGC, Congress provided objective, equally applicable and fairly ascertainable standards and reduced the emphasis on currying political favor from its members to approvingly act on the proposed cityhood law. Otherwise, cities chartered under a previous Congress can be unmade, at a whim, by a subsequent Congress, regardless of its compliance with the LGC's requirements. Fairness and

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(ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office.

… … …

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, transfers, and non-recurring income." (RA 9009, Sec. 1, amending Sec. 450 of the LGC; emphasis supplied)

equity demand that the criteria established by the LGC be faithfully and strictly enforced, most especially by Congress whose power is the actual subject of legislative delimitation.

In granting it the power to fix the criteria for the creation of a city, the Constitution, of course, did not preclude Congress from revising the standards imposed under the LGC. Congress shall enjoy the freedom to reconsider the minimum standards under the LGC, if future circumstances call for it. However, the method of revising the criteria must be directly done through an amendatory law of the LGC (such as RA 9009), and not through the indirect route of creating cities and exempting their compliance with the established and prevailing standards. By indiscriminately carving out exemptions in the charter laws themselves, Congress enfeebled the normative function of the LGC on the legislative power to create cities. Taking the argument to the extreme, a single *barangay* now has the chance of being chartered as a component city without compliance with the income, territorial or population requirements under the LGC, for as long as enough Congressional support is mustered to push for its exemption — not in a general amendatory law, but through its own specific legislative charter. The selective disregard of the norms under the LGC in favor of some municipalities cannot be sanctioned in a system where the rule of law remains dominant. Unless prevented by the Court, Congress will now be emboldened to charter new cities wholesale and arbitrarily relax the stringent standards under the LGC, which it imposed on itself.

It must be emphasized that no inconsistency arises from the present minority's continued participation in the disposition of the second or subsequent motions for reconsideration of the parties with the avowed purpose of predictability of judicial pronouncements. The reiteration of the minority's position that the Cityhood Laws are unconstitutional is an expression that none of the "new" or rehashed arguments in the subsequent motions have merited a change in their stand and appreciation of the facts and the law. For the minority to abandon their involvement from the proceedings in a mechanical adherence to the rule that the second and subsequent motions for reconsideration are prohibited pleadings that do not warrant

the Court's attention is to capitulate to the sixteen municipalities' abhorrent strategy of insistent prayer for review of re-hashed arguments, already passed on, repeatedly.

If stability in the Court's decisions[46] is to be maintained, then parties should not be encouraged to tirelessly seek reexamination of determined principles and speculate on the fluctuation of the law with every change of its expounders.[47] In *Clavano v. Housing and Land Use Regulatory Board*, the Court explained that:

> "The tendency of the law," observes Justice Oliver Wendell Holmes, "must always be to narrow the field of uncertainty." And so was the judicial process conceived to bring about the just termination of legal disputes. The mechanisms for this objective are manifold but the essential precept underlying them is the immutability of final and executory judgments.
>
> This fundamental principle in part affirms our recognition of instances when disputes are inadequately presented before the courts and addresses situations when parties fail to unravel what they truly desire and thus fail to set forth all the claims which they want the courts to resolve. It is only when judgments have become final and executory, or even when already deemed satisfied, that our negligent litigants belatedly come forth to pray for more relief. **The distilled wisdom and genius of the ages would tell us to reject their pleas, for the loss to litigants in particular and to society in general would in the long run be greater than the gain if courts and judges were clothed with power to revise their final decisions at will**.[48] (Emphasis supplied)

Unlike that of the other two political branches whose mandates are regularly renewed through direct election, the Court's

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[46] Concurring Opinion, Justice Romeo Callejo, Sr., *Lambino v. COMELEC*, G.R. No. 174153, 25 October 2006, 505 SCRA 160, citing *London Street Tramways Co., Ltd. v. London County Council*, [1898] A.C. 375, in COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS 117-118.

[47] Concurring Opinion, Justice Romeo Callejo, Sr., *Lambino v. COMELEC*, *supra*.

[48] G.R. No. 143781, 27 February 2002, 378 SCRA 172.

legitimacy must be painstakingly earned with every decision that puts voice to the cherished value judgments of the sovereign. The judicial function in an organized and cohesive society governed by the rule of law is placed in serious peril if the people cannot rely on the finality of court decisions to regulate their affairs. There is no reason for the Court to bend over backwards to accommodate the parties' requests for reconsideration, yet again, of the unconstitutionality of the sixteen Cityhood Laws as borne by the First Decision, especially if the result would lead to the fracturing of central tenets of the justice system. The people's sense of an orderly government will find it unacceptable if the Supreme Court, which is tasked to express enduring values through its judicial pronouncements, is founded on sand, easily shifting with the changing tides.

The legal process of creating cities — as enacted and later amended by the legislature, implemented by the executive, and interpreted by the judiciary — serves as the people's North Star: certain, stable and predictable. Absent the three branches' adherence to the rule of law, our society would denigrate into uncertainty, instability and even anarchy. Indeed, the law is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy and to observe the limitations it imposes upon the exercise of the authority that it gives.[49] No public officer is held to these highest of normative standards than those whose duties are to adjudicate the rights of the people and to articulate on enduring principles of law applicable to all.

As Justice Robert Jackson eloquently expressed,[50] the Supreme Court is not final because it is infallible; **it is infallible because**

[49] *U. S. v. Lee*, 106 US 196, 261 (1882).

[50] "Rightly or wrongly, the belief is widely held by the practicing profession that this Court no longer respects impersonal rules of law but is guided in these matters by personal impressions which from time to time may be shared by a majority of Justices. Whatever has been intended, this Court also has generated an impression in much of the judiciary that regard for precedents and authorities is obsolete, that words no longer mean what they have always meant to the profession, that the law knows no fixed principles. …"

it is final. And because its decisions are final, even if faulty, there must be every energy expended to ensure that the faulty decisions are few and far between. The integrity of the judiciary rests not only upon the fact that it is able to administer justice, but also upon the perception and confidence of the community that the people who run the system have done justice.[51]

The determination of the correctness of a judicial decision turns on far more than its outcome.[52] Rather, it turns on whether its outcome evolved from principles of judicial methodology, since the judiciary's function is not to bring about some desired state of affairs, but to find objectively the right decision by adhering to the established general system of rules.[53]

What we are dealing with in this case is no longer limited to the question of constitutionality of Cityhood Laws; we are also confronted with the question of certainty and predictability in the decisions of the Court under a democratic system governed by law and rules and its ability to uphold the Constitution and normative legislation such as the LGC.

The public has unduly suffered from the repeated "flip-flopping" in this case, especially since it comes from the branch of government tasked to embody in a clear form enduring rules of

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"… Whenever decisions of one court are reviewed by another, a percentage of them are reversed. That reflects a difference in outlook normally found between personnel comprising different courts. However, reversal by a higher court is not proof that justice is thereby better done. There is no doubt that if there were a super-Supreme Court, a substantial proportion of our reversals of state courts would also be reversed. **We are not final because we are infallible, but we are infallible only because we are final**." (Concurring Opinion of Justice Robert Jackson, *Brown v. Allen*, 344 U.S. 443 [1953]; emphasis supplied).

[51] *Spouses Sadik v. Casar*, A. M. No. MTJ-95-1053, 02 January 1997, 266 SCRA 1, citing *Talens-Dabon v. Arceo*, Administrative Matter No. RTJ-96-1336, 25 July 1996.

[52] Dissenting Opinion, Justice Conchita Carpio Morales, *La Bugal B'laan Tribal Association, et al. v. Ramos*, G. R. No. 127882, 01 February 2005.

[53] Dissenting Opinion, Justice Conchita Carpio Morales, *La Bugal B'laan Tribal Association, et al. v. Ramos, id.*

civil justice that are to govern them. In expressing these truths, I echo the sentiment of a judicial colleague from a foreign jurisdiction who once said, "I write these words, not as a jeremiad,[54] but in the belief that unless the courts adhere to the guidance of fixed principles, we will soon bring objective law to its sepulcher."[55]

FIRST DIVISION

[G.R. No. 148483. June 29, 2011]

BANGKO SENTRAL NG PILIPINAS, *petitioner, vs.* **ORIENT COMMERCIAL BANKING CORPORATION, JOSE C. GO, GEORGE C. GO, VICENTE C. GO, GOTESCO PROPERTIES, INC., GO TONG ELECTRICAL SUPPLY INC., EVER EMPORIUM, INC., EVER GOTESCO RESOURCES AND HOLDINGS INC., GOTESCO TYAN MING DEVELOPMENT INC., EVERCREST CEBU GOLF CLUB AND RESORTS, INC., NASUGBU RESORTS INC., GMCC UNITED DEVELOPMENT CORP., GULOD RESORT, INC., OK STAR, EVER PLAZA, INC. AND EVER ELECTRICAL MFG., INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; COMPROMISES; NATURE THEREOF. — A compromise agreement intended to resolve a matter already

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[54] A lamenting and denunciatory complaint; a doleful story; or a dolorous tirade. (*Webster's Third New International Dictionary* [Merriam Webster 1993] at 1213)

[55] Dissenting Opinion, Circuit Judge Tam, *In Re: Estate of Burrogh*, 475 F.2d 370, 154 U.S.App.D.C. 259 (1973).

under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, such judicial compromise has the force and effect of a judgment. It transcends its identity as a mere contract between the parties, as it becomes a judgment that is subject to execution in accordance with the Rules of Court.

2. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; ISSUES; WITH THE FINAL SETTLEMENT OF THE CLAIMS OF PETITIONER AGAINST RESPONDENTS THROUGH COMPROMISE, THE ISSUES RAISED IN THE PRESENT PETITION HAVE BECOME MOOT AND ACADEMIC. — With the final settlement of the claims of petitioner against herein respondents, the issues raised in the present petition regarding the propriety of the issuance of writ of attachment by the trial court and the grave abuse of discretion allegedly committed by the appellate court in reversing the orders of the trial court, have now become moot and academic. "A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value." In such cases, there is no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition.

APPEARANCES OF COUNSEL

Fe Becina-Macalino for petitioner.
Pacheco Law Office for respondents.

R E S O L U T I O N

VILLARAMA, JR., *J.*:

The present petition although captioned as one for *certiorari* is hereby treated as a petition for review on *certiorari* under Rule 45, with prayer for issuance of temporary restraining order and writ of preliminary injunction. It seeks to annul and set aside the June 11, 2001 Decision[1] of the Court of Appeals (CA)

[1] *Rollo* (Vol. I), pp. 78-117. Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Eubulo G. Verzola and Jose L. Sabio, Jr., concurring.

in CA-G.R. SP No. 60509. The CA nullified the writs of preliminary attachment issued by the Regional Trial Court (RTC) of Manila, Branch 12 in Civil Case No. 99-95993 and ordered the dismissal of the amended complaint as against some of the named defendants.

Briefly, the facts as set forth in the CA Decision:

On February 13, 1998, herein respondent Orient Commercial Banking Corporation (OCBC) declared a bank holiday on account of its inability to pay all its obligations to depositors, creditors and petitioner *Bangko Sentral ng Pilipinas* (BSP).

On March 17, 1998, OCBC filed a petition for rehabilitation with the Monetary Board. The bank was placed under receivership and the Philippine Deposit Insurance Corporation (PDIC) was designated as Receiver. Pursuant to the Monetary Board's Resolution No. 1427, PDIC took over all the assets, properties, obligations and operations of OCBC. Respondent Jose C. Go, the principal and biggest stockholder of OCBC, with his affiliate companies (respondent corporations), challenged the said action of the PDIC before the RTC of Manila, Branch 44 (Civil Case No. 98-91265). Said case was dismissed and the dismissal was appealed to the CA.

During the pendency of Civil Case No. 98-91265, the Monetary Board adopted Resolution No. 602 dated May 7, 1999 directing the Receiver to proceed with the liquidation of OCBC. In June, 1999, the PDIC instituted Special Proceeding No. 99-94328 before the RTC of Manila, Branch 51 entitled "In Re: Petition for Assistance in the Liquidation of Orient Commercial Banking Corporation, Philippine Deposit Insurance Corporation, *Petitioner.*"

On December 17, 1999, petitioner filed in the RTC of Manila (Branch 12) a complaint for sum of money with preliminary attachment (Civil Case No. 99-95993) against the respondents seeking to recover deficiency obligation owed by OCBC which then stood at ₱1,273,959,042.97 with interest at 8.894% per annum, overdraft obligation of ₱1,028,000,000.00, attorney's fees and costs of suit.

On January 14, 2000, the RTC of Manila, Branch 12 issued an Order[2] in Civil Case No. 99-95993 granting petitioner's motion for preliminary attachment. On January 19, 2000, following the posting by petitioner of ₱50 million attachment bond issued by the Government Service Insurance System (GSIS), the corresponding writ was issued ordering the Deputy Sheriffs to attach the real and personal properties of respondents to the value of petitioner's demand in the amount of ₱2,301,951,042.97, exclusive of interests and costs, as security for the said claim.[3]

Respondents filed with the CA a petition for *certiorari* questioning the aforesaid orders (CA-G.R. SP No. 60509). They also filed a consolidated motion to dismiss Civil Case No. 99-95993, which the trial court denied.[4]

On June 1, 2001, respondents filed an Urgent Motion to Resolve and/or to Issue a Temporary Restraining Order or a Writ of Preliminary Injunction. On June 11, 2001, the CA rendered the assailed decision dissolving the writ of attachment and ordering the RTC to desist from proceeding with Civil Case No. 99-95993 as against the respondents except Jose C. Go, Vicente C. Go and George C. Go. It appears, however, that a Manifestation with Motion to Admit Attached Opposition (to the Urgent Motion to Resolve and Issue a Temporary Restraining Order)[5] was filed by petitioner on June 6, 2001.

On June 27, 2001, petitioner filed a Very Urgent Manifestation[6] stating that: (1) the June 11, 2001 decision had to await finality as it was rendered without requiring the petitioner to file its comment, and because the complaint was dismissed despite massive evidence presented before the trial court on the participation of respondents in the commission of fraud against

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[2] CA *rollo*, pp. 419-426. Penned by Judge (now Associate Justice of the Court of Appeals) Rosmari D. Carandang.

[3] *Id.* at 427-429.

[4] *Id.* at 477-489.

[5] *Id.* at 575-585.

[6] *Id.* at 601-614.

BSP; (2) of the total outstanding amount of ₱2,301,959,042.97 being collected by petitioner from the respondents, only ₱200 million was garnished and it is doubtful if the taxpayers' interest can be satisfied there being no assets that can be found in the name of respondents and no assets of OCBC were levied or garnished; and (3) petitioner had filed a Vigorous Opposition before the trial court as the respondents are prematurely implementing the CA decision, even as the petitioner still can elevate the case to this Court.

On July 2, 2001, the CA recalled its June 11, 2001 decision and granted a ten-day period for petitioner to file its comment. The *ponente* likewise inhibited himself from the case.[7]

On July 3, 2001, BSP filed the instant petition with the following prayer:

> WHEREFORE, it is respectfully prayed that this Honorable Court:
>
> 1. Give due course to this petition.
>
> 2. Upon its filing and, before the application for the issuance of a writ of preliminary injunction is heard, order the issuance of a temporary restraining order immediately restraining the respondents from proceeding in any manner with the enforcement of the assailed decision [dated] June 11, 2001 in CA-G.R. SP No. 60509 until this petition is resolved with finality.
>
> 3. After hearing the application, order the issuance of a writ of preliminary injunction restraining the respondents from proceeding in any manner with the enforcement of the assailed decision June 11, 2001 in CA-G.R. SP No. 60509 until the instant case shall have been adjudicated on its merits.
>
> 4. After hearing the instant case on its merits, order that the writ of preliminary injunction be made permanent, nullifying the assailed decision [dated] June 11, 2001 in CA-G.R. SP No. 60509 which is sought to be reviewed and directing the resumption of the proceedings in Civil Case No. 99-95993.[8]

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[7] *Id.* at 618-622.

[8] *Rollo* (Vol. I), pp. 63-64.

Respondents moved to dismiss the petition on grounds of forum shopping and submission of a defective certificate of non-forum shopping. Subsequently, petitioner filed an Omnibus Motion for clarification and for leave of court to admit comment on the motion to dismiss, to which the respondents filed their opposition. On February 22, 2002, respondents' Comment was filed and petitioner filed its Reply on July 2, 2002. On January 31, 2003, respondents filed an Urgent Motion to Lift, Quash and Dissolve the Writ of Preliminary Attachment Against the Properties of the Respondents Except Orient Commercial Banking Corporation. Petitioner filed its comment on the said motion on May 5, 2003.[9]

On January 5, 2004, petitioner filed a manifestation informing this Court that on December 16, 2003, the parties have agreed to settle their differences and executed a Compromise Agreement, which was approved by the RTC of Manila, Branch 12 on December 29, 2003. Attached to the said manifestation is the motion to approve judgment based on compromise agreement and the trial court's Order approving the same.[10]

Under the Compromise Agreement, the parties agreed to cause the dismissal of nineteen (19) pending civil cases in various courts, including the present case before this Court, CA-G.R. SP No. 60509 and Civil Case No. 95-95993, in consideration for the faithful compliance by the respondents of the agreed terms and conditions of payment of the total deficiency obligation of OCBC to petitioner amounting to Two Billion Nine Hundred Seventy-Four Million Nine Hundred Three Thousand Pesos (₱2,974,903,000.00). Said outstanding indebtedness of OCBC is to be settled in the following manner:

A. A downpayment shall be made by the defendants through the *DACION* of certain real estate properties more particularly described in Annex "B" hereof.

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[9] *Id.* at 1060-1071,1083-1103, 1153-1178,1215-1231, 1433-1453 and *Rollo* (Vol. II), pp. 1479-1501.

[10] *Rollo* (Vol. II), pp. 1745-1761 and 1779-1780.

a i) The parties shall execute separate DEEDS OF *DACION* over the real estate properties described in Annex "B" upon the execution of the Agreement;

a ii) All Capital Gains Tax on the properties for *DACION* shall be payable by the defendants but Documentary Stamp Tax, Transfer Tax and all registration fees on the *DACION* shall for the account of plaintiff.

B. The balance remaining after the *DACION* of the real estate properties shall be paid by the defendants within a period of ten (10) years but extendible for another five (5) years provided that the defendants shall religiously comply with the amortization schedule (Annex "C" hereof) for a continuous period of two (2) years from date of first amortization.

b i) The foregoing outstanding balance shall be charged interest at 91-day T-bill rate upon execution of this Compromise Agreement repriced every three (3) months for a period of 10 years and payable monthly in arrears.

C. Additional Properties for Execution

c i) To ensure payment of the monthly amortizations due under this Compromise Agreement, defendants Ever Crest Golf Club Resort, Inc. and Mega Heights, Inc. have agreed to have its real properties with improvements covered by TCT Nos. T-68963, T-68964, T-68966 and TDs ARPN-AA-17023-00582 and AA-17023-0058 shall be subject of existing writ of attachment to secure the faithful payment of the outstanding obligation herein mentioned, until such obligation shall have been fully paid by defendants to plaintiff.

c ii) That all the corporate approvals for the execution of this Compromise Agreement by Ever Crest Golf Club Resort, Inc. and Mega Heights, Inc. consisting of stockholders resolution and Board of Directors approval have already been obtained at the time of the execution of this Agreement.

c iii) Failure on the part of the defendants to fully settle their outstanding obligations and to comply with any of the terms of this Compromise Agreement shall entitle the plaintiff to immediately ask for a Writ of Execution against all assets of the Ever Crest Golf Club Resort, Inc. and Mega Heights,

Inc. now or hereafter arising from the signing of this Compromise Agreement.

x x x x x x x x x

III. FUNDS UNDER GARNISHMENT

III i) The parties agreed that the existing funds under garnishment with Land Bank of the Philippines and PCI-Equitable Bank shall be subject of the following disposition:

(a) 75% of the total garnished amounts shall be released to defendants net of reimbursement for the expenses incurred by plaintiff involving the prosecution of this case with RTC-Manila, Branch 12 prior to the execution date of this Compromise Agreement.

(b) 25% of the total garnished amounts shall be paid and applied to defendants' amortizations per Annex "C".

III ii) Insofar as the garnishments on the rentals and all other income or revenues on the malls owned and operated by the defendants, the same shall continue to guarantee the stipulated amortization due from the defendants per the amortization schedule.[11]

A compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, such judicial compromise has the force and effect of a judgment. It transcends its identity as a mere contract between the parties, as it becomes a judgment that is subject to execution in accordance with the Rules of Court.[12]

With the final settlement of the claims of petitioner against herein respondents, the issues raised in the present petition regarding the propriety of the issuance of writ of attachment by the trial court and the grave abuse of discretion allegedly committed by the appellate court in reversing the orders of the trial court, have now become moot and academic. "A moot and academic case is one that ceases to present a justiciable controversy by

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[11] *Id.* at 1754-1755 and 1757.

[12] *Rañola v. Rañola,* G.R. No. 185095, July 31, 2009, 594 SCRA 788, 794.

virtue of supervening events, so that a declaration thereon would be of no practical use or value."[13] In such cases, there is no actual substantial relief to which petitioner would be entitled to and which would be negated by the dismissal of the petition.[14]

WHEREFORE, the petition is *DENIED* for being moot and academic. The case is hereby *REMANDED* to the Regional Trial Court of Manila, Branch 12 for continuation of proceedings to implement the Compromise Agreement in Civil Case No. 99-95993 dated December 22, 2003 approved by said court on December 29, 2003.

No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *del Castillo, JJ.,* concur.

FIRST DIVISION

[G.R. No. 172227. June 29, 2011]

SPOUSES WILFREDO PALADA and BRIGIDA PALADA,* *petitioners, vs.* **SOLIDBANK CORPORATION and SHERIFF MAYO DELA CRUZ,** *respondents.*

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[13] See *Lacson v. MJ Lacson Development Company, Inc.*, G.R. No. 168840, December 8, 2010, p. 10, citing *Integrated Bar of the Philippines v. Atienza*, G.R. No. 175241, February 24, 2010, 613 SCRA 510, 522-523.

[14] *Chuidian v. Sandiganbayan*, G.R. Nos. 156383 & 160723, July 31, 2006, 497 SCRA 327, 344.

* In view of the demise of petitioner Brigada Palada, the title of the instant case should have been "Wilfredo Palada and Heirs of Brigada Palada" (See Transcript of Stenographic Notes [TSN] dated September 9, 2003, pp. 2-3).

SYLLABUS

1. CIVIL LAW; CONTRACTS; LOAN; PERFECTED ONLY UPON THE DELIVERY OF THE OBJECT OF THE CONTRACT. — Under Article 1934 of the Civil Code, a loan contract is perfected only upon the delivery of the object of the contract. In this case, although petitioners applied for a ₱3 million loan, only the amount of ₱1 million was approved by the bank because petitioners became collaterally deficient when they failed to purchase TCT No. T-227331 which had an appraised value of ₱1,944,000.00. Hence, on March 17, 1997, only the amount of ₱1 million was released by the bank to petitioners. Upon receipt of the approved loan on March 17, 1997, petitioners executed a promissory note for the amount of ₱1 million. As security for the ₱1 million loan, petitioners on the same day executed in favor of the bank a real estate mortgage over the properties covered by TCT Nos. T-237695, T-237696, T-237698, T-143683, T-143729, T-225131 and T-225132. Clearly, contrary to the findings of the RTC, the loan contract was perfected on March 17, 1997 when petitioners received the ₱1 million loan, which was the object of both the promissory note and the real estate mortgage executed by petitioners in favor of the bank.

2. ID.; ID.; MORTGAGE; A MORTGAGOR IS ALLOWED TO TAKE A SECOND OR SUBSEQUENT MORTGAGE, SUBJECT TO THE PRIOR RIGHTS OF PREVIOUS MORTGAGES. — There is nothing on the face of the real estate mortgage contract to arouse any suspicion of insertion or forgery. Below the list of properties mortgaged are the signatures of petitioners. Except for the bare denials of petitioner, no other evidence was presented to show that the signatures appearing on the dorsal portion of the real estate mortgage contract are forgeries. Likewise flawed is petitioners' reasoning that TCT Nos. T-225131 and T-225132 could not have been included in the list of properties mortgaged as these were still mortgaged with the PNB at that time. Under our laws, a mortgagor is allowed to take a second or subsequent mortgage on a property already mortgaged, subject to the prior rights of the previous mortgages.

3. ID.; ID.; ID.; ANY IRREGULARITY IN THE NOTARIZATION OR EVEN THE LACK OF NOTARIZATION DOES NOT

AFFECT THE VALIDITY OF THE MORTGAGE CONTRACT. — As to the RTC's finding that "the x x x bank acted in bad faith when it made it appear that the mortgage was executed by the [petitioners] on June 16, 1997, when the document was acknowledged before Atty. German, x x x when in truth and in fact, the [petitioners] executed said mortgage sometime in March, 1997 x x x," we find the same without basis. A careful perusal of the real estate mortgage contract would show that the bank did not make it appear that the real estate mortgage was executed on June 16, 1997, the same day that it was notarized, as the date of execution of the real estate mortgage contract was left blank. And the mere fact that the date of execution was left blank does not prove bad faith. Besides, any irregularity in the notarization or even the lack of notarization does not affect the validity of the document. Absent any clear and convincing proof to the contrary, a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents. All told, we find no error on the part of the CA in sustaining the validity of the real estate mortgage as well as the certificate of sale.

APPEARANCES OF COUNSEL

Sable Law Office for petitioners.
Albert D. Pawingi for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Allegations of bad faith and fraud must be proved by clear and convincing evidence.[1]

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the January 11, 2006 Decision[3] of

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[1] *Cathay Pacific Airways, Ltd. v. Sps. Vazquez,* 447 Phil. 306, 321 (2003).

[2] *Rollo,* pp. 9-21.

[3] *Id.* at 23-33; penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Regalado E. Maambong and Lucenito N. Tagle.

the Court of Appeals (CA) in CA-G.R. CV No. 84236 which dismissed the complaint filed by the petitioners against the respondents and declared as valid the real estate mortgage and certificate of sale. Also assailed is the April 12, 2006 Resolution[4] which denied the motion for reconsideration thereto.

Factual Antecedents

In February or March 1997, petitioners, spouses Wilfredo and Brigida Palada, applied for a ₱3 million loan broken down as follows: ₱1 million as additional working capital under the bills discounting line; ₱500,000.00 under the bills purchase line; and ₱1.5 million under the time loan from respondent Solidbank Corporation (bank).[5]

On March 17, 1997, petitioners received from the bank the amount of ₱1 million as additional working capital evidenced by a promissory note[6] and secured by a real estate mortgage[7] in favor of the bank covering several real properties situated in Santiago City.[8]

Due to the failure of petitioners to pay the obligation, the bank foreclosed the mortgage and sold the properties at public auction.[9]

On August 19, 1999, petitioners filed a Complaint[10] for nullity of real estate mortgage and sheriff's certificate of sale[11] with prayer for damages, docketed as Civil Case No. 35-2779, against

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[4] CA *rollo*, pp. 84-85.

[5] *Rollo*, p. 40.

[6] Records, p. 7. Although the promissory note is dated June 16, 1997, both parties admit that the promissory note was executed on March 17, 1997 (Complaint, *id.* at 2 and Answer, *id.* at 23).

[7] *Id.* at 8.

[8] *Rollo*, pp. 23-24; TSN dated July 17, 2000, pp. 6-9, Direct Examination of Wilfredo Palada.

[9] *Id.* at 24.

[10] Records, pp. 1-6.

[11] *Id.* at 11-14.

the bank and respondent Sheriff Mayo dela Cruz (sheriff) before the Regional Trial Court (RTC) of Santiago City, Branch 35.[12] Petitioners alleged that the bank, without their knowledge and consent, included their properties covered by Transfer Certificate of Title (TCT) Nos. T-225131 and T-225132,[13] among the list of properties mortgaged; that it was only when they received the notice of sale from the sheriff in August 1998 that they found out about the inclusion of the said properties; that despite their objection, the sheriff proceeded with the auction sale; and that the auction sale was done in Santiago City in violation of the stipulation on venue in the real estate mortgage.[14]

The bank, in its Answer,[15] denied the material allegations of the Complaint and averred that since petitioners were collaterally deficient, they offered TCT Nos. T-237695, T-237696, T-225131 and T-225132 as additional collateral;[16] that although the said properties were at that time mortgaged to the Philippine National Bank (PNB), the bank accepted the offer and caused the annotation of the mortgage in the original copies with the Register of Deeds with the knowledge and consent of petitioners;[17] and that when petitioners' obligation to PNB was extinguished, they delivered the titles of the four properties to the bank.[18]

Ruling of the Regional Trial Court

On October 21, 2004, the RTC rendered a Decision[19] declaring the real estate mortgage void for lack of sufficient consideration. According to the RTC, the real estate mortgage lacks consideration because the loan contract was not perfected due to the failure

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[12] *Rollo*, p. 34.

[13] Indicated as T-225152 and T-221512 in the Complaint; see records, p. 2.

[14] *Id.* at 3-4.

[15] *Id.* at 23-26.

[16] *Id.* at 24.

[17] *Id.*

[18] *Id.*

[19] *Rollo*, pp. 34-46; penned by Judge Efren M. Cacatian.

of the bank to deliver the full ₱3 million to petitioners.[20] The RTC also found the bank guilty of fraud and bad faith, thereby ordering it to pay petitioners moral and exemplary damages, and attorney's fees. The RTC ruled:

> Furthermore, it appears that the defendant unilaterally changed the term and condition of their loan contract by releasing only ₱1M of the ₱3M approved loan. The defendant, in so doing, violated their principal contract of loan in bad faith, and should be held liable therefor.
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> Likewise, the defendant bank acted in bad faith when it made it appear that the mortgage was executed by the plaintiffs on June 16, 1997, when the document was acknowledged before Atty. German Balot, more so, when it made it appear that the mortgage was registered with the Register of Deeds allegedly on the same date, when in truth and in fact, the plaintiffs executed said mortgage sometime [in] March, 1997, obviously much earlier than June 16, 1997; for, if indeed the mortgage was executed on said date, June 16, 1997, it should have been written on the mortgage contract itself. On the contrary, the date and place of execution [were left blank]. Amazingly, defendant claims that it was the plaintiffs who [had the] mortgage notarized by Atty. Balot; such claim however is contrary or against its own interest, because, the defendant should be the most interested party in the genuineness and due execution of material important papers and documents such as the mortgage executed in its favor to ensure the protection of its interest embodied in said documents, and the act of leaving the notarization of such a very important document as a mortgage executed in its favor is contrary to human nature and experience, more so against its interest; hence, the claim is untrue.
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> Moreover, the defendant also appears to have been motivated by bad faith amounting to fraud when it was able to register the mortgage with the Register of Deeds at the time when the collateral certificates of titles were still in the custody and possession of another mortgagee bank (PNB) due also to an existing/subsisting mortgage covering the same. Definitely, the defendant resorted to some machinations or fraudulent means in registering the contract of mortgage with the Register of Deeds. This should not be countenanced.

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[20] *Id.* at 43.

Thus, on account of defendant's bad faith, plaintiffs suffered mental anguish, serious anxiety, besmirched reputation, wounded feelings, moral shock and social humiliation, which entitle them to the award of moral damages, more so, that it was shown that defendants' bad faith was the proximate cause of these damages plaintiffs suffered.

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WHEREFORE, with all the foregoing considerations, judgment is hereby rendered in favor of the plaintiffs and against the defendant as follows:

1. DECLARING as null and void the undated real estate mortgage between the plaintiffs and the defendant, appearing as Doc. No. 553; Page No. 29; Book No. 28; Series of 1997; (Exhibit "B" for the plaintiffs, Exhibit "1" for the defendant);

2. Likewise DECLARING as null and void the Sheriff's Foreclosure and the Certificate of Sale, dated October 7, 1998 (Exhibits "F" to "F-3");

3. ORDERING the defendant to pay the plaintiffs the following damages:

a) Php 1,000,000.00, moral damages;
b) Php 500,000.00, exemplary damages; and
c) Php 50,000.00, Attorney's fee; and

4. ORDERING the defendant to pay the cost of litigation, including plaintiffs' counsel's court appearance at Php1,500.00 each.

SO ORDERED.[21]

Ruling of the Court of Appeals

On appeal, the CA reversed the ruling of the RTC. The CA said that based on the promissory note and the real estate mortgage contract, the properties covered by TCT Nos. T-225131 and T-225132 were mortgaged to secure the loan in the amount of ₱1 million, and not the ₱3 million loan applied by petitioners.[22] As to the venue of the auction sale, the CA declared that since the properties subject of the case are in Santiago City, the holding

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[21] *Id.* at 44-46.

[22] *Id.* at 29-30.

of the auction sale in Santiago City was proper[23] pursuant to Sections 1[24] and 2[25] of Act No. 3135.[26] The CA likewise found no fraud or bad faith on the part of the bank to warrant the award of damages by the RTC, thus:

> The List of Properties Mortgaged printed at the dorsal side of the real estate mortgage contract particularly includes the subject parcels of land covered by TCT No. T-225132 and TCT No. T-225131. Below the enumeration, the signatures of [petitioners] clearly appear. The document was notarized before Notary Public German M. Balot. We therefore find no cogent reason why the validity of the real estate mortgage covering the two subject properties should not be sustained.
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> Settled is the rule in our jurisdiction that a notarized document has in its favor the presumption of regularity, and to overcome the same, there must be evidence that is clear, convincing and more than merely preponderant; otherwise the document should be upheld. Clearly, the positive presumption of the due execution of the subject real estate mortgage outweighs [petitioners'] bare and unsubstantiated denial that the parcels of land covered by TCT Nos. T-225132 and T-225131 were among those intended to secure the loan of One Million Pesos. Their imputation of fraud among the officials of [the bank] is weak and unpersuasive. x x x
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> x x x x x x x x x
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> We also note why despite the alleged non-approval of [petitioners'] application for additional loan, the owner's copy of TCT Nos.

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[23] *Id.* at 31.

[24] SECTION 1. When a sale is made under a special power inserted in or attached to any real-estate mortgage hereafter made as security for the payment of money or the fulfillment of any other obligation, the provisions of the following sections shall govern as to the manner in which the sale and redemption shall be effected, whether or not provision for the same is made in the power.

[25] SECTION 2. Said sale cannot be made legally outside of the province in which the property sold is situated; and in case the place within said province in which the sale is to be made is the subject of stipulation, such sale shall be made in said place or in the municipal building of the municipality in which the property or part thereof is situated.

[26] AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.

T-225131 and T-225132 remained in the possession of [the bank]. [Petitioners'] claim that they were still hoping to obtain an additional loan in the future appears to this court as a weak explanation. The continued possession by the bank of the certificates of title merely supports the bank's position that the parcels of land covered by these titles were actually mortgaged to secure the payment of the One Million Peso loan.

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WHEREFORE, in view of the foregoing, the assailed decision of the Regional Trial Court, Branch 35 of Santiago City in Civil Case No. 35-2779 is hereby **ANNULLED and SET ASIDE** and a new one entered:

(1) **DISMISSING** the complaint filed by the plaintiffs-appellees against the defendants-appellants; and

(2) Declaring **VALID** the questioned real estate mortgage and certificate of sale.

SO ORDERED.[27]

On February 1, 2006, petitioners moved for reconsideration but the CA denied the same in its Resolution dated April 12, 2006.[28]

Issues

Hence, the present recourse, where petitioners allege that:

(A)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION IN ANNULLING OR REVERSING THE FINDINGS OF BRANCH 35, REGIONAL TRIAL COURT OF SANTIAGO CITY THEREBY IN EFFECT DISMISSING THE COMPLAINT FILED BY THE PETITIONERS AGAINST RESPONDENTS SOLIDBANK CORPORATION AND SHERIFF MAYO DELA CRUZ.

(B)

THE COURT OF APPEALS ERRED IN DECLARING VALID THE REAL ESTATE MORTGAGE EXECUTED BETWEEN THE

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[27] *Rollo*, pp. 30-32.

[28] *Id.* at 10-11.

PETITIONERS AND RESPONDENT SOLIDBANK CORPORATION AND IN SUSTAINING THE VALIDITY OF THE CERTIFICATE OF SALE ISSUED BY RESPONDENT SHERIFF MAYO DELA CRUZ.

(C)

THE COURT OF APPEALS ERRED IN MISAPPRECIATING THE FINDINGS OF FACTS OF BRANCH 35, REGIONAL TRIAL COURT OF SANTIAGO CITY.[29]

Simply put, the core issue in this case is the validity of the real estate mortgage and the auction sale.

Petitioners' Arguments

Petitioners echo the ruling of the RTC that the real estate mortgage and certificate of sale are void because the bank failed to deliver the full amount of the loan. They likewise impute bad faith and fraud on the part of the bank in including TCT Nos. T-225131 and T-225132 in the list of properties mortgaged. They insist that they did not sign the dorsal portion of the real estate mortgage contract, which contains the list of properties mortgaged, because at that time the dorsal portion was still blank;[30] and that TCT Nos. T-225131 and T-225132 were not intended to be included in the list of mortgaged properties because these titles were still mortgaged with the PNB at the time the real estate mortgage subject of this case was executed.[31] Moreover, they claim that they delivered the titles of these properties to the bank as additional collateral for their additional loans, and not for the ₱1 million loan.[32]

Respondent bank's Arguments

The bank denies petitioners' allegations of fraud and bad faith and argues that the real estate mortgage which was properly notarized enjoys the presumption of regularity.[33] It maintains

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[29] *Id.* at 14-15.

[30] *Id.* at 110.

[31] *Id*.

[32] *Id.* at 114.

[33] *Id*. at unpaged-129 and 131-132.

that TCT Nos. T-225131 and T-225132 were mortgaged as additional collateral for the ₱1 million loan.[34]

Our Ruling

The petition is bereft of merit.

The loan contract was perfected.

Under Article 1934[35] of the Civil Code, a loan contract is perfected only upon the delivery of the object of the contract.

In this case, although petitioners applied for a ₱3 million loan, only the amount of ₱1 million was approved by the bank because petitioners became collaterally deficient when they failed to purchase TCT No. T-227331 which had an appraised value of ₱1,944,000.00.[36] Hence, on March 17, 1997, only the amount of ₱1 million was released by the bank to petitioners.[37]

Upon receipt of the approved loan on March 17, 1997, petitioners executed a promissory note for the amount of ₱1 million.[38] As security for the ₱1 million loan, petitioners on the same day executed in favor of the bank a real estate mortgage over the properties covered by TCT Nos. T-237695, T-237696, T-237698, T-143683, T-143729, T-225131 and T-225132. Clearly, contrary to the findings of the RTC, the loan contract was perfected on March 17, 1997 when petitioners received the ₱1 million loan, which was the object of both the promissory note and the real estate mortgage executed by petitioners in favor of the bank.

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[34] *Id.* at 127.

[35] Art. 1934. An accepted promise to deliver something by way of commodatum or simple loan is binding upon the parties, but the *commodatum* or simple loan itself shall not be perfected until the delivery of the object of the contract.

[36] TSN dated July 17, 2000, pp. 21-22, Direct Examination of Wilfredo Palada; TSN dated July 31, 2000, pp. 7 and 25-26, Cross-examination and Re-direct examination of Wilfredo Palada; TSN dated August 25, 2003, p. 22, Direct Examination of Julieta Ayala.

[37] TSN dated July 17, 2000, p. 5; Direct Examination of Wilfredo Palada.

[38] *Id.* at 5-7.

Claims of fraud and bad faith are unsubstantiated.

Petitioners claim that there was fraud and bad faith on the part of the bank in the execution and notarization of the real estate mortgage contract.

We do not agree.

There is nothing on the face of the real estate mortgage contract to arouse any suspicion of insertion or forgery. Below the list of properties mortgaged are the signatures of petitioners.[39] Except for the bare denials of petitioner, no other evidence was presented to show that the signatures appearing on the dorsal portion of the real estate mortgage contract are forgeries.

Likewise flawed is petitioners' reasoning that TCT Nos. T-225131 and T-225132 could not have been included in the list of properties mortgaged as these were still mortgaged with the PNB at that time. Under our laws, a mortgagor is allowed to take a second or subsequent mortgage on a property already mortgaged, subject to the prior rights of the previous mortgages.[40]

As to the RTC's finding that "the x x x bank acted in bad faith when it made it appear that the mortgage was executed by the [petitioners] on June 16, 1997, when the document was acknowledged before Atty. German, x x x when in truth and in fact, the [petitioners] executed said mortgage sometime in March, 1997 x x x," we find the same without basis. A careful perusal of the real estate mortgage contract would show that the bank did not make it appear that the real estate mortgage was executed on June 16, 1997, the same day that it was notarized, as the date of execution of the real estate mortgage contract was left blank.[41] And the mere fact that the date of execution was left blank does not prove bad faith. Besides, any irregularity in the notarization or even the lack of notarization does not affect the

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[39] *Rollo*, p. 30.

[40] *Cinco v. Court of Appeals*, G.R. No. 151903, October 9, 2009, 603 SCRA 108,118.

[41] Records, p. 8.

validity of the document. Absent any clear and convincing proof to the contrary, a notarized document enjoys the presumption of regularity and is conclusive as to the truthfulness of its contents.[42]

All told, we find no error on the part of the CA in sustaining the validity of the real estate mortgage as well as the certificate of sale.

WHEREFORE, the petition is hereby *DENIED*. The assailed January 11, 2006 Decision of the Court of Appeals and its April 12, 2006 Resolution in CA-G.R. CV No. 84236 are hereby *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 181398. June 29, 2011]

FEB LEASING AND FINANCE CORPORATION (now BPI LEASING CORPORATION), *petitioner, vs.* **SPOUSES SERGIO P. BAYLON and MARITESS VILLENA-BAYLON, BG HAULER, INC., and MANUEL Y. ESTILLOSO,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; LEASE; SINCE PETITIONER DID NOT FILE A CROSS-CLAIM AGAINST RESPONDENT BG HAULER, INC., THE LESSEE, THE COURT CANNOT

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[42] *Ocampo v. Land Bank of the Philippines,* G.R. No. 164968, July 3, 2009, 591 SCRA 562, 571-572.

REQUIRE RESPONDENT TO REIMBURSE PETITIONER FOR THE LATTER'S LIABILITY TO RESPONDENT-SPOUSES BAYLON. — In the instant case, Section 5.1 of the lease contract between petitioner and BG Hauler provides: Sec. 5.1. It is the principle of this Lease that while the title or ownership of the EQUIPMENT, with all the rights consequent thereof, are retained by the LESSOR, the risk of loss or damage of the EQUIPMENT from whatever source arising, as well as **any liability resulting from the ownership, operation and/or possession thereof**, **over and above those actually compensated by insurance, are hereby transferred to and assumed by the LESSEE** hereunder which shall continue in full force and effect. If it so wishes, petitioner may proceed against BG Hauler to seek enforcement of the latter's contractual obligation under Section 5.1 of the lease contract. In the present case, petitioner did not file a cross-claim against BG Hauler. Hence, this Court cannot require BG Hauler to reimburse petitioner for the latter's liability to the spouses Baylon.

2. MERCANTILE LAW; LAND TRANSPORTATION AND TRAFFIC CODE (REPUBLIC ACT NO. 4136); AS THE REGISTERED OWNER OF THE OIL TANKER, PETITIONER MAY NOT ESCAPE ITS LIABILITY TO THIRD PERSONS; THE REGISTERED OWNER OF THE VEHICLE IS LIABLE FOR QUASI-DELICTS RESULTING FROM ITS USE. — However, as the registered owner of the oil tanker, petitioner may not escape its liability to third persons. Under Section 5 of Republic Act No. 4136, as amended, all motor vehicles used or operated on or upon any highway of the Philippines must be registered with the Bureau of Land Transportation (now Land Transportation Office) for the current year. Furthermore, any encumbrances of motor vehicles must be recorded with the Land Transportation Office in order to be valid against third parties. In accordance with the law on compulsory motor vehicle registration, this Court has consistently ruled that, with respect to the public and third persons, the registered owner of a motor vehicle is directly and primarily responsible for the consequences of its operation regardless of who the actual vehicle owner might be. Well-settled is the rule that the registered owner of the vehicle is liable for quasi-delicts resulting from its use. Thus, even if the vehicle has already been sold, leased, or transferred to another person at the time the vehicle figured in an accident,

the registered vehicle owner would still be liable for damages caused by the accident. The sale, transfer or lease of the vehicle, which is not registered with the Land Transportation Office, will not bind third persons aggrieved in an accident involving the vehicle. The compulsory motor vehicle registration underscores the importance of registering the vehicle in the name of the actual owner.

3. ID.; ID.; THE POLICY BEHIND THE RULE IS TO ENABLE THE VICTIM TO FIND REDRESS BY THE EXPEDIENT RECOURSE OF IDENTIFYING THE REGISTERED VEHICLE OWNER IN THE RECORDS OF THE LAND TRANSPORTATION OFFICE. — The policy behind the rule is to enable the victim to find redress by the expedient recourse of identifying the registered vehicle owner in the records of the Land Transportation Office. The registered owner can be reimbursed by the actual owner, lessee or transferee who is known to him. Unlike the registered owner, the innocent victim is not privy to the lease, sale, transfer or encumbrance of the vehicle. Hence, the victim should not be prejudiced by the failure to register such transaction or encumbrance. As the Court held in *PCI Leasing*: The burden of registration of the lease contract is minuscule compared to the chaos that may result if registered owners or operators of vehicles are freed from such responsibility. Petitioner pays the price for its failure to obey the law on compulsory registration of motor vehicles for registration is a pre-requisite for any person to even enjoy the privilege of putting a vehicle on public roads.

4. ID.; ID.; PUBLIC POLICY BEHIND THE RULE. — In the landmark case of *Erezo v. Jepte*, the Court succinctly laid down the public policy behind the rule, thus: The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for

damages or injuries caused on public highways. x x x Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him, by collusion with others or, or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially for the damage or injury done. A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership. If the policy of the law is to be enforced and carried out, the registered owner should not be allowed to prove the contrary to the prejudice of the person injured, that is to prove that a third person or another has become the owner, so that he may be thereby be relieved of the responsibility to the injured person. In this case, petitioner admits that it is the registered owner of the oil tanker that figured in an accident causing the death of Loretta. As the registered owner, it cannot escape liability for the loss arising out of negligence in the operation of the oil tanker. Its liability remains even if at the time of the accident, the oil tanker was leased to BG Hauler and was being driven by the latter's driver, and despite a provision in the lease contract exonerating the registered owner from liability.

5. CIVIL LAW; DAMAGES; ATTORNEYS FEES; AWARD DELETED FOR LACK OF BASIS. — As a final point, we agree with the Court of Appeals that the award of attorney's fees by the RTC must be deleted for lack of basis. The RTC failed to justify the award of ₱50,000 attorney's fees to respondent spouses Baylon. The award of attorney's fees must have some factual, legal and equitable bases and cannot be left to speculations and conjectures. Consistent with prevailing jurisprudence, attorney's fees as part of damages are awarded only in the instances enumerated in Article 2208 of the Civil Code. Thus, the award of attorney's fees is the exception rather than the rule. Attorney's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate.

APPEARANCES OF COUNSEL

Benedicto Versoza Felipe & Burkley Law Offices for petitioner.
Pedro T. Santos, Jr. for BG Hauler and Manuel Y. Estilloso.
Romeo Ortiz De Belen for Sps. Baylon.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on *certiorari*[1] of the 9 October 2007 Decision[2] and the 18 January 2008 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 81446. The 9 October 2007 Decision affirmed the 30 October 2003 Decision[4] of the Regional Trial Court (Branch 35) of Gapan City in Civil Case No. 2334 ordering petitioner to pay respondents damages. The 18 January 2008 Resolution denied petitioner's motion for reconsideration.

The Facts

On 2 September 2000, an Isuzu oil tanker running along Del Monte Avenue in Quezon City and bearing plate number TDY 712 hit Loretta V. Baylon (Loretta), daughter of respondent spouses Sergio P. Baylon and Maritess Villena-Baylon (spouses Baylon). At the time of the accident, the oil tanker was registered[5] in the name of petitioner FEB Leasing and Finance Corporation[6]

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 31-48. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman, concurring.

[3] *Id.* at 50-52. Penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Bienvenido L. Reyes and Monina Arevalo Zenarosa, concurring.

[4] *Id.* at 53-65. Penned by Judge Dorentino Z. Floresta.

[5] Records (Vol. I), p. 8.

[6] Now BPI Leasing Corporation; records (Vol. II), pp. 14-24.

(petitioner). The oil tanker was leased[7] to BG Hauler, Inc. (BG Hauler) and was being driven by the latter's driver, Manuel Y. Estilloso. The oil tanker was insured[8] by FGU Insurance Corp. (FGU Insurance).

The accident took place at around 2:00 p.m. as the oil tanker was coming from Balintawak and heading towards Manila. Upon reaching the intersection of Bonifacio Street and Del Monte Avenue, the oil tanker turned left. While the driver of the oil tanker was executing a left turn side by side with another vehicle towards Del Monte Avenue, the oil tanker hit Loretta who was then crossing Del Monte Avenue coming from Mayon Street. Due to the strong impact, Loretta was violently thrown away about three to five meters from the point of impact. She fell to the ground unconscious. She was brought for treatment to the Chinese General Hospital where she remained in a coma until her death two days after.[9]

The spouses Baylon filed with the RTC (Branch 35) of Gapan City a Complaint[10] for damages against petitioner, BG Hauler, the driver, and FGU Insurance. Petitioner filed its answer with compulsory counterclaim while FGU Insurance filed its answer with counterclaim. On the other hand, BG Hauler filed its answer with compulsory counterclaim and cross-claim against FGU Insurance.

Petitioner claimed that the spouses Baylon had no cause of action against it because under its lease contract with BG Hauler, petitioner was not liable for any loss, damage, or injury that the leased oil tanker might cause. Petitioner claimed that no employer-employee relationship existed between petitioner and the driver.

BG Hauler alleged that neither do the spouses Baylon have a cause of action against it since the oil tanker was not registered in its name. BG Hauler contended that the victim was guilty of

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[7] *Rollo,* pp. 86-89.

[8] Records (Vol. I), p. 33.

[9] *Id.* at 10.

[10] *Id.* at 1-7.

contributory negligence in crossing the street. BG Hauler claimed that even if its driver was at fault, BG Hauler exercised the diligence of a good father of a family in the selection and supervision of its driver. BG Hauler also contended that FGU Insurance is obliged to assume all liabilities arising from the use of the insured oil tanker.

For its part, FGU Insurance averred that the victim was guilty of contributory negligence. FGU Insurance concluded that the spouses Baylon could not expect to be paid the full amount of their claims. FGU Insurance pointed out that the insurance policy covering the oil tanker limited any claim to a maximum of ₱400,000.00.

During trial, FGU Insurance moved that (1) it be allowed to deposit in court the amount of ₱450,000.00 in the joint names of the spouses Baylon, petitioner, and BG Hauler and (2) it be released from further participating in the proceedings. After the RTC granted the motion, FGU Insurance deposited in the Branch Clerk of Court a check in the names of the spouses Baylon, petitioner, and BG Hauler. The RTC then released FGU Insurance from its contractual obligations under the insurance policy.

The Ruling of the RTC

After weighing the evidence submitted by the parties, the RTC found that the death of Loretta was due to the negligent act of the driver. The RTC held that BG Hauler, as the employer, was solidarily liable with the driver. The RTC further held that petitioner, as the registered owner of the oil tanker, was also solidarily liable.

The RTC found that since FGU Insurance already paid the amount of ₱450,000.00 to the spouses Baylon, BG Hauler, and petitioner, the insurer's obligation has been satisfactorily fulfilled. The RTC thus dismissed the cross-claim of BG Hauler against FGU Insurance. The decretal part of the RTC's decision reads:

> Wherefore, premises considered, judgment is hereby rendered in favor of the plaintiffs and against defendants FEB Leasing (now BPI Leasing), BG Hauler, and Manuel Estilloso, to wit:

1. Ordering the defendants, jointly and severally, to pay plaintiffs the following:

a. the amount of ₱62,000.00 representing actual expenses incurred by the plaintiffs;
b. the amount of ₱50,000.00 as moral damages;
c. the amount of ₱2,400,000.00 for loss of earning capacity of the deceased victim, Loretta V. Baylon;
d. the sum of ₱50,000.00 for death indemnity;
e. the sum of ₱50,000.00 for and as attorney's fees; and
f. with costs against the defendants.

2. Ordering the dismissal of defendants' counter-claim for lack of merit and the cross claim of defendant BG Hauler against defendant FGU Insurance.

SO ORDERED.[11]

Petitioner, BG Hauler, and the driver appealed the RTC Decision to the Court of Appeals. Petitioner claimed that as financial lessor, it is exempt from liability resulting from any loss, damage, or injury the oil tanker may cause while being operated by BG Hauler as financial lessee.

On the other hand, BG Hauler and the driver alleged that no sufficient evidence existed proving the driver to be at fault. They claimed that the RTC erred in finding BG Hauler negligent despite the fact that it had exercised the diligence of a good father of a family in the selection and supervision of its driver and in the maintenance of its vehicles. They contended that petitioner, as the registered owner of the oil tanker, should be solely liable for Loretta's death.

The Ruling of the Court of Appeals

The Court of Appeals held that petitioner, BG Hauler, and the driver are solidarily liable for damages arising from Loretta's death. Petitioner's liability arose from the fact that it was the registered owner of the oil tanker while BG Hauler's liability emanated from a provision in the lease contract providing that the lessee shall be liable in case of any loss, damage, or injury the leased oil tanker may cause.

[11] *Rollo*, pp. 64-65.

Thus, the Court of Appeals affirmed the RTC Decision but with the modification that the award of attorney's fees be deleted for being speculative. The dispositive part of the appellate court's Decision reads:

> WHEREFORE, in the light of the foregoing, the instant appeal is DENIED. Consequently, the assailed Decision of the lower court is AFFIRMED with the MODIFICATION that the award of attorney's fees is DELETED.
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> IT IS SO ORDERED.[12]

Dissatisfied, petitioner and BG Hauler, joined by the driver, filed two separate motions for reconsideration. In its 18 January 2008 Resolution, the Court of Appeals denied both motions for lack of merit.

Unconvinced, petitioner alone filed with this Court the present petition for review on *certiorari* impleading the spouses Baylon, BG Hauler, and the driver as respondents.[13]

The Issue

The sole issue submitted for resolution is whether the registered owner of a financially leased vehicle remains liable for loss, damage, or injury caused by the vehicle notwithstanding an exemption provision in the financial lease contract.

The Court's Ruling

Petitioner contends that the lease contract between BG Hauler and petitioner specifically provides that BG Hauler shall be liable for any loss, damage, or injury the leased oil tanker may cause even if petitioner is the registered owner of the said oil tanker. Petitioner claims that the Court of Appeals erred in holding petitioner solidarily liable with BG Hauler despite having found the latter liable under the lease contract.

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[12] *Id.* at 47.

[13] *Rollo*, p. 99. BG Hauler and the driver filed in this Court (Third Division) a separate petition for review, which the Court denied in its Resolution dated 9 April 2008. The subsequent motion for reconsideration was likewise denied with finality.

For their part, the spouses Baylon counter that the lease contract between petitioner and BG Hauler cannot bind third parties like them. The spouses Baylon maintain that the existence of the lease contract does not relieve petitioner of direct responsibility as the registered owner of the oil tanker that caused the death of their daughter.

On the other hand, BG Hauler and the driver argue that at the time petitioner and BG Hauler entered into the lease contract, Republic Act No. 5980[14] was still in effect. They point out that the amendatory law, Republic Act No. 8556,[15] which exempts from liability in case of any loss, damage, or injury to third persons the registered owners of vehicles financially leased to another, was not yet enacted at that time.

In point is the 2008 case of *PCI Leasing and Finance, Inc. v. UCPB General Insurance Co., Inc.*[16] There, we held liable PCI Leasing and Finance, Inc., the registered owner of an 18-wheeler Fuso Tanker Truck leased to Superior Gas & Equitable Co., Inc. (SUGECO) and being driven by the latter's driver, for damages arising from a collision. This despite an express provision in the lease contract to the effect that the lessee, SUGECO, shall indemnify and hold the registered owner free from any liabilities, damages, suits, claims, or judgments arising from SUGECO's use of the leased motor vehicle.

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[14] AN ACT REGULATING THE ORGANIZATION AND OPERATION OF FINANCING COMPANIES. Approved on 4 August 1969.

[15] AN ACT AMENDING REPUBLIC ACT NO. 5980, AS AMENDED, OTHERWISE KNOWN AS THE FINANCING COMPANY ACT. Approved on 26 February 1998. Section 10 of Republic Act No. 8556 states:

SEC. 10. There is hereby inserted after Section 8 as renumbered, new Sections 9, 10, 11, 12 and 13 to read as follows:

x x x x x x x x x

"SEC. 12. *Liability of Lessors*. — Financing companies shall not be liable for loss, damage or injury caused by a motor vehicle, aircraft, vessel, equipment or other property leased to a third person or entity except where the motor vehicle, aircraft, vessel, equipment or other property is operated by the financing company, its employees or agents at the time of the loss, damage or injury.

x x x x x x x x x

[16] G.R. No. 162267, 4 July 2008, 557 SCRA 141.

In the instant case, Section 5.1 of the lease contract between petitioner and BG Hauler provides:

> Sec. 5.1. It is the principle of this Lease that while the title or ownership of the EQUIPMENT, with all the rights consequent thereof, are retained by the LESSOR, the risk of loss or damage of the EQUIPMENT from whatever source arising, as well as **any liability resulting from the ownership, operation and/or possession thereof**, **over and above those actually compensated by insurance, are hereby transferred to and assumed by the LESSEE** hereunder which shall continue in full force and effect.[17] (Emphasis supplied)

If it so wishes, petitioner may proceed against BG Hauler to seek enforcement of the latter's contractual obligation under Section 5.1 of the lease contract. In the present case, petitioner did not file a cross-claim against BG Hauler. Hence, this Court cannot require BG Hauler to reimburse petitioner for the latter's liability to the spouses Baylon. However, as the registered owner of the oil tanker, petitioner may not escape its liability to third persons.

Under Section 5 of Republic Act No. 4136,[18] as amended, all motor vehicles used or operated on or upon any highway of the Philippines must be registered with the Bureau of Land Transportation (now Land Transportation Office) for the current year.[19] Furthermore, any encumbrances of motor vehicles must

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[17] *Rollo*, p. 86 (back page); records (Vol. I), p. 123 (back page).

[18] Otherwise known as the "Land Transportation and Traffic Code."

[19] Section 5 of RA 4136 reads:

> SEC. 5. *Compulsory registration of motor vehicles.* — (a) All motor vehicles and trailers of any type used or operated on or upon any highway of the Philippines must be registered with the bureau of Land Transportation for the current year in accordance with the provisions of this Act.
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> x x x x x x x x x
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> (e) Encumbrances of motor vehicles. — Mortgages, attachments, and other encumbrances of motor vehicles, in order to be valid against third parties must be recorded in the bureau. Voluntary transactions or voluntary encumbrances shall likewise be properly recorded on the face of all outstanding copies of the certificates of registration of the vehicle concerned.

be recorded with the Land Transportation Office in order to be valid against third parties.[20]

In accordance with the law on compulsory motor vehicle registration, this Court has consistently ruled that, with respect to the public and third persons, the registered owner of a motor vehicle is directly and primarily responsible for the consequences of its operation regardless of who the actual vehicle owner might be.[21] Well-settled is the rule that the registered owner of the vehicle is liable for quasi-delicts resulting from its use. Thus, even if the vehicle has already been sold, leased, or transferred to another person at the time the vehicle figured in an accident, the registered vehicle owner would still be liable for damages caused by the accident. The sale, transfer or lease of the vehicle, which is not registered with the Land Transportation Office, will not bind third persons aggrieved in an accident involving the vehicle. The compulsory motor vehicle registration underscores the importance of registering the vehicle in the name of the actual owner.

The policy behind the rule is to enable the victim to find redress by the expedient recourse of identifying the registered vehicle owner in the records of the Land Transportation Office. The registered owner can be reimbursed by the actual owner, lessee or transferee who is known to him. Unlike the registered owner, the innocent victim is not privy to the lease, sale, transfer or encumbrance of the vehicle. Hence, the victim should not be prejudiced by the failure to register such transaction or encumbrance. As the Court held in *PCI Leasing*:

Cancellation or foreclosure of such mortgages, attachments, and other encumbrances shall likewise be recorded, and in the absence of such cancellation, no certificate of registration shall be issued without the corresponding notation of mortgage, attachment and/or other encumbrances.

x x x x x x x x x

[20] *Id.*

[21] *PCI Leasing and Finance, Inc. v. UCPB General Insurance Co., Inc.*, G.R. No. 162267, 4 July 2008, 557 SCRA 141; *Equitable Leasing Corporation v. Suyom*, 437 Phil. 244 (2002); *First Malayan Leasing and Finance Corporation v. Court of Appeals*, G.R. No. 91378, 9 June 1992, 209 SCRA 660.

The burden of registration of the lease contract is minuscule compared to the chaos that may result if registered owners or operators of vehicles are freed from such responsibility. Petitioner pays the price for its failure to obey the law on compulsory registration of motor vehicles for registration is a pre-requisite for any person to even enjoy the privilege of putting a vehicle on public roads.[22]

In the landmark case of *Erezo v. Jepte*,[23] the Court succinctly laid down the public policy behind the rule, thus:

> The main aim of motor vehicle registration is to identify the owner so that if any accident happens, or that any damage or injury is caused by the vehicle on the public highways, responsibility therefor can be fixed on a definite individual, the registered owner. Instances are numerous where vehicles running on public highways caused accidents or injuries to pedestrians or other vehicles without positive identification of the owner or drivers, or with very scant means of identification. It is to forestall these circumstances, so inconvenient or prejudicial to the public, that the motor vehicle registration is primarily ordained, in the interest of the determination of persons responsible for damages or injuries caused on public highways.
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> x x x x x x x x x
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> Were a registered owner allowed to evade responsibility by proving who the supposed transferee or owner is, it would be easy for him, by collusion with others or, or otherwise, to escape said responsibility and transfer the same to an indefinite person, or to one who possesses no property with which to respond financially for the damage or injury done. A victim of recklessness on the public highways is usually without means to discover or identify the person actually causing the injury or damage. He has no means other than by a recourse to the registration in the Motor Vehicles Office to determine who is the owner. The protection that the law aims to extend to him would become illusory were the registered owner given the opportunity to escape liability by disproving his ownership. If the policy of the law is to be enforced and carried out, the registered owner should not be allowed to prove the contrary to the prejudice of the person injured, that is to prove that a third person or another has become

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[22] *PCI Leasing and Finance, Inc. v. UCPB General Insurance Co., Inc.*, G.R. No. 162267, 4 July 2008, 557 SCRA 141, 154.

[23] 102 Phil. 103 (1957).

the owner, so that he may be thereby be relieved of the responsibility to the injured person.[24]

In this case, petitioner admits that it is the registered owner of the oil tanker that figured in an accident causing the death of Loretta. As the registered owner, it cannot escape liability for the loss arising out of negligence in the operation of the oil tanker. Its liability remains even if at the time of the accident, the oil tanker was leased to BG Hauler and was being driven by the latter's driver, and despite a provision in the lease contract exonerating the registered owner from liability.

As a final point, we agree with the Court of Appeals that the award of attorney's fees by the RTC must be deleted for lack of basis. The RTC failed to justify the award of ₱50,000 attorney's fees to respondent spouses Baylon. The award of attorney's fees must have some factual, legal and equitable bases and cannot be left to speculations and conjectures.[25] Consistent with prevailing jurisprudence,[26] attorney's fees as part of damages are awarded only in the instances enumerated in Article 2208 of the Civil Code.[27] Thus, the award of attorney's fees is the exception rather

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[24] *Id.* at 108-109.

[25] *V.V. Soliven Realty Corp. v. Ong*, 490 Phil. 229 (2005).

[26] *Delos Santos v. Papa*, G.R. No. 154427, 8 May 2009, 587 SCRA 385; *Filipinas Broadcasting Network, Inc. v. Ago Medical & Educational Center – Bicol Christian College of Medicine*, 489 Phil. 380 (2005); *Pajuyo v. Court of Appeals*, G.R. No. 146364, 3 June 2004, 430 SCRA 492.

[27] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

than the rule. Attorney's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate.[28]

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 9 October 2007 Decision and the 18 January 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 81446 affirming with modification the 30 October 2003 Decision of the Regional Trial Court (Branch 35) of Gapan City in Civil Case No. 2334 ordering petitioner FEB Leasing and Finance Corporation, BG Hauler, Inc., and driver Manuel Y. Estilloso to solidarily pay respondent spouses Sergio P. Baylon and Maritess Villena-Baylon the following amounts:

a. ₱62,000.00 representing actual expenses incurred by the plaintiffs;
b. ₱50,000.00 as moral damages;
c. ₱2,400,000.00 for loss of earning capacity of the deceased victim, Loretta V. Baylon; and
d. ₱50,000.00 for death indemnity.

Costs against petitioner.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Perez,* and *Sereno, JJ.*, concur.

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(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[28] *Lapanday Agricultural and Development Corporation (LADECO) v. Angala*, G.R. No. 153076, 21 June 2007, 525 SCRA 229.

[*] Designated acting member per Special Order No. 1006 dated 10 June 2011.

SECOND DIVISION

[G.R. No. 183564. June 29, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **LUCRESIO ESPINA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; ESTABLISHED. — For a charge of rape to prosper under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) **the offender had carnal knowledge of a woman**; and (2) he accomplished such act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or **when she was under 12 years of age** or was demented. Sexual intercourse with a girl below 12 years old is *statutory rape*. In this type of rape, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. x x x The prosecution, positively established the elements of statutory rape under Article 266-A(d) of the Revised Penal Code. *First*, the appellant succeeded in having carnal knowledge with the victim. Not only did AAA identify her father as her rapist, she also recounted the sexual abuse in detail, particularly how her father inserted his penis into her vagina. *Second*, the prosecution established that AAA was below 12 years of age at the time of the rape. During the pre-trial, the parties admitted that AAA was "only 11 years old at the time of the commission of the crime." AAA herself testified that she was born on October 26, 1986, and was 11 years old when she was raped. This testimony was corroborated by her stepmother, BBB.

2. ID.; ID.; PENALTIES; *RECLUSION PERPETUA*; PROPER PENALTY IN CASE AT BAR. — Under Article 266-B of the Revised Penal Code, the death penalty shall be imposed when the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. As earlier stated, the parties stipulated during the pre-trial that AAA was 11 years old at the time of the commission of the crime. The parties likewise stipulated

that AAA is the appellant's legitimate daughter. During trial, AAA, BBB and the appellant testified to this fact. We, however, cannot impose the death penalty in view of R.A. No. 9346, signed into law on June 24, 2006. Pursuant to this law, we affirm the CA's reduction of the penalty from death to *reclusion perpetua*, with the modification, however, that the appellant shall not be eligible for parole.

3. ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY AND MORAL DAMAGES, AWARDED; AMOUNT OF EXEMPLARY DAMAGES AWARDED, INCREASED. — We affirm the awards of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, as they are in accord with prevailing jurisprudence. Civil indemnity is awarded on the finding that rape was committed. In like manner, moral damages are awarded to rape victims without need of proof other than the fact of rape, on the assumption that the victim suffered moral injuries from the experience she underwent. However, we increased the amount of the awarded exemplary damages from ₱25,000.00 to ₱30,000.00, pursuant to established jurisprudence.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; CREDIBILITY OF VICTIM'S TESTIMONY; UPHELD. — In her testimony dated May 19, 1999, AAA positively identified the appellant as the one who raped her. Her testimony was clear and straightforward; she was consistent in her recollection of the details of her sexual abuse. In addition, her testimony was corroborated by the medical findings of Dr. Cerillo.

5. ID.; ID.; DEFENSES OF ALIBI AND DENIAL; CANNOT PREVAIL OVER THE VICTIM'S DIRECT, POSITIVE AND CATEGORICAL ASSERTION. — We, likewise, find unmeritorious the appellant's twin defenses of denial and alibi. Denial could not prevail over the victim's direct, positive and categorical assertion. Significantly, the appellant admitted that he was in *Barangay* Bantigue when the incident happened. It is settled that alibi necessarily fails when there is positive evidence of the physical presence of the accused at the crime scene or its immediate vicinity.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

BRION, *J.*:

We resolve in this Decision the appeal from the April 22, 2008 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 00345. The CA affirmed with modification the judgment[2] of the Regional Trial Court (*RTC*), Branch 35, Ormoc City, finding appellant Lucresio Espina guilty beyond reasonable doubt of qualified rape, and sentencing him to suffer the death penalty.

On December 7, 1997, AAA,[3] together with her stepmother BBB and stepsister CCC, went to the dance hall in *Barangay* Bantigue, Isabel, Leyte, to watch the "benefit dance."[4] At around 11:00 p.m., AAA went outside the dance hall to look for her friends. Suddenly, her father, herein appellant, called from a nearby mango tree and told her that he has an errand for her. AAA went with the appellant, as bidden. When they arrived at a "distant dark place,"[5] the appellant removed his short pants and brief. The appellant then removed AAA's panty, ordered her to lie down, went on top of her, and inserted his penis in her

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[1] *Rollo*, pp. 4-14; penned by Associate Justice Priscilla Baltazar-Padilla, and concurred in by Associate Justice Franchito N. Diamante and Associate Justice Florito S. Macalino.

[2] CA *rollo*, pp. 39-45; penned by Judge Fortunito L. Madrona.

[3] The Court withholds the real name of the victim-survivor and uses fictitious initials instead to represent her. Likewise, the personal circumstances of the victims-survivors or any other information tending to establish or compromise their identities, as well as those of their immediate families or household members, are not to be disclosed. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] TSN, August 10, 1999, pp. 9-11.

[5] TSN, May 19, 1999, pp. 7-8 and 21.

vagina. AAA shouted for help, but the appellant covered her mouth with his hands. Thereafter, the appellant ordered AAA to put her panty back on. When the appellant asked why there was so much blood in her anus, AAA replied that it came from her vagina. The appellant then threatened to kill her if she reported the incident to anyone. The appellant brought AAA to their house and ordered her to change her clothes. The appellant took AAA's clothes and hid them. Afterwards, they returned to the dance hall.[6]

At the dance hall, BBB told AAA that she had been looking for her. AAA, BBB and CCC returned to their house at around 1:00 a.m. When AAA was already asleep, DDD, the appellant's sister, told BBB to examine AAA because she noticed that the latter had difficulty climbing the stairs. BBB examined AAA's body and saw blood in her vagina. When BBB confronted AAA, the latter stated that she had been molested by the appellant.[7] In the early morning of December 8, 1997, BBB accompanied AAA to the Municipal Health Center of Isabel, Leyte, where the latter was examined by Dr. Refelina Cerillo.[8]

The prosecution charged the appellant before the RTC with the crime of rape.[9] The appellant denied the charge against him and claimed that he had a drinking session with his friends at the house of Melanio Velasco on the day of the incident. According to him, he fell asleep on a grassy area and woke up at 8:00 a.m. of the next day.[10]

The RTC found the appellant guilty beyond reasonable doubt of qualified rape, and sentenced him to suffer the death penalty. It also ordered the appellant to pay the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.[11]

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[6] *Id.* at 8-10.

[7] *Id.* at 10; TSN, August 10, 1999, pp. 13-17 and 28-32.

[8] TSN, March 3, 1999, pp. 6-7.

[9] Records, p. 1.

[10] TSN, September 8, 1999, pp. 7-15.

[11] *Supra* note 2.

On appeal, the CA affirmed the RTC judgment, with the following modifications: (1) the penalty of death is reduced to *reclusion perpetua*; (2) the amount of civil indemnity is increased to ₱75,000.00; (3) the amount of moral damages is increased to ₱75,000.00; and (4) the appellant is further ordered to pay the victim ₱25,000.00 as exemplary damages.[12]

We **DENY** the appeal but modify the designation of the crime committed, the penalty imposed, and the amount of the awarded exemplary damages.

For a charge of rape to prosper under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) **the offender had carnal knowledge of a woman**; and (2) he accomplished such act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or **when she was under 12 years of age** or was demented.[13]

Sexual intercourse with a girl below 12 years old is *statutory rape*. In this type of rape, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place.[14]

In her testimony dated May 19, 1999, AAA positively identified the appellant as the one who raped her. Her testimony was clear and straightforward; she was consistent in her recollection of the details of her sexual abuse. In addition, her testimony was corroborated by the medical findings of Dr. Cerillo.

We, likewise, find unmeritorious the appellant's twin defenses of denial and alibi. Denial could not prevail over the victim's direct, positive and categorical assertion. Significantly, the appellant admitted that he was in *Barangay* Bantigue when the incident happened. It is settled that alibi necessarily fails when

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[12] *Supra* note 1, at 13.

[13] *People v. Trayco*, G.R. No. 171313, August 14, 2009, 596 SCRA 233, 244.

[14] See *People v. Balunsat*, G.R. No. 176743, July 28, 2010, 626 SCRA 77, 91.

there is positive evidence of the physical presence of the accused at the crime scene or its immediate vicinity.[15]

The prosecution, therefore, positively established the elements of statutory rape under Article 266-A(d) of the Revised Penal Code. *First*, the appellant succeeded in having carnal knowledge with the victim. Not only did AAA identify her father as her rapist, she also recounted the sexual abuse in detail, particularly how her father inserted his penis into her vagina. *Second*, the prosecution established that AAA was below 12 years of age at the time of the rape. During the pre-trial, the parties admitted that AAA was "only 11 years old at the time of the commission of the crime."[16] AAA herself testified that she was born on October 26, 1986, and was 11 years old when she was raped. This testimony was corroborated by her stepmother, BBB.

Under Article 266-B of the Revised Penal Code, the death penalty shall be imposed when the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. As earlier stated, the parties stipulated during the pre-trial that AAA was 11 years old at the time of the commission of the crime. The parties likewise stipulated that AAA is the appellant's legitimate daughter.[17] During trial, AAA, BBB and the appellant testified to this fact. We, however, cannot impose the death penalty in view of R.A. No. 9346, signed into law on June 24, 2006. Pursuant to this law, we affirm the CA's reduction of the penalty from death to *reclusion perpetua*, with the modification, however, that the appellant shall not be eligible for parole.

We affirm the awards of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, as they are in accord with

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[15] See *People v. Mingming*, G.R. No. 174195, December 10, 2008, 573 SCRA 509.

[16] Records, pp. 40-41.

[17] *Id.* at 40-42.

prevailing jurisprudence.[18] Civil indemnity is awarded on the finding that rape was committed.[19] In like manner, moral damages are awarded to rape victims without need of proof other than the fact of rape, on the assumption that the victim suffered moral injuries from the experience she underwent.[20]

However, we increase the amount of the awarded exemplary damages from ₱25,000.00 to ₱30,000.00, pursuant to established jurisprudence.[21]

WHEREFORE, premises considered, we *AFFIRM* the April 22, 2008 decision of the Court of Appeals in CA-G.R. CR HC No. 00345, with the following *MODIFICATIONS*:

(a) appellant Lucresio Espina is hereby found GUILTY beyond reasonable doubt of STATUTORY RAPE, as defined and penalized in Article 266-A(1)(d) of the Revised Penal Code;

(b) he is sentenced to suffer the penalty of *RECLUSION PERPETUA, without eligibility for parole*; and

(c) the amount of the awarded exemplary damages is INCREASED from ₱25,000.00 to ₱30,000.00.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Perez,* and *Sereno, JJ.,* concur.

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[18] *People v. Macafe*, G.R. No. 185616, November 24, 2010; and *People v. Sia*, G.R. No. 174059, February 27, 2009, 580 SCRA 364.

[19] *People v. Mingming*, *supra* note 15.

[20] See *People v. Lopez*, G.R. No. 179714, October 2, 2009, 602 SCRA 517.

[21] See *People v. Alfonso*, G.R. No. 182094, August 18, 2010, 628 SCRA 431; and *People v. Mendoza*, G.R. No. 188669, February 16, 2010, 612 SCRA 753.

[*] Designated as Acting Member of the Second Division per Special Order No. 1006 dated June 10, 2011.

SECOND DIVISION

[G.R. No. 188365. June 29, 2011]

BPI FAMILY SAVINGS BANK, INC., *petitioner, vs.* **PRYCE GASES, INC., INTERNATIONAL FINANCE CORPORATION, and NEDERLANDSE FINANCIERINGS-MAATSCHAPPIJ VOOR ONTWIKKELINGSLANDEN N.V.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; INTERIM RULES ON CORPORATE REHABILITATION; A PETITION FOR CORPORATE REHABILITATION IS CONSIDERED A SPECIAL PROCEEDING; THE PERIOD OF APPEAL PROVIDED IN PARAGRAPH 19 (b) OF THE INTERIM RULES RELATIVE TO THE IMPLEMENTATION OF BATAS PAMBANSA BLG. 129 FOR SPECIAL PROCEEDINGS SHALL APPLY, THAT IS, THE PERIOD OF APPEAL SHALL BE DAYS SINCE A RECORD ON APPEAL IS REQUIRED. — Section 5 of the Interim Rules on Corporate Rehabilitation provides that "(t)he review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court x x x." Under A.M. No. 00-8-10-SC, a petition for corporate rehabilitation is considered a special proceeding. Thus, the period of appeal provided in paragraph 19(b) of the Interim Rules Relative to the Implementation of *Batas Pambansa Blg.* 129 for special proceedings shall apply, that is, the period of appeal shall be 30 days since a record of appeal is required. Thus: 19. *Period of Appeal.* — (a) x x x (b) In appeals in special proceedings in accordance with Rule 109 of the Rules of Court and other cases wherein multiple appeals are allowed, the period of appeal shall be thirty (30) days, a record of appeal being required. On 14 September 2004, this Court issued A.M. No. 04-9-07-SC providing that all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealed to the Court of Appeals through a petition for review under

Rule 43 of the Rules of Court, to be filed within fifteen (15) days from notice of the decision or final order of the Regional Trial Court. However, in this case, BFB filed a notice of appeal on 3 November 2003, before the effectivity of A.M. No. 04-9-07-SC. Hence, at the time of filing of BFB's appeal, the applicable mode of appeal is Section 2, Rule 41 of the 1997 Rules of Civil Procedure which provides: Sec. 2. *Modes of Appeal.* — (a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

2. ID.; CIVIL PROCEDURE; APPEAL FROM REGIONAL TRIAL COURTS; PERFECTION OF APPEAL; A PARTY'S APPEAL BY RECORD ON APPEAL IS DEEMED PERFECTED AS TO HIM WITH RESPECT TO THE SUBJECT MATTER THEREOF UPON APPROVAL OF THE RECORD ON APPEAL FILED IN DUE TIME. — Under Section 9, Rule 41 of the 1997 Rules of Civil Procedure, "(a) party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon approval of the record on appeal filed in due time." In this case, BFB did not perfect the appeal when it failed to file the record on appeal. The filing of the notice of appeal on 3 November 2003 was not sufficient because at the time of its filing, the Rules required the filing of the record on appeal and not merely a notice of appeal. The issuance by the Court of A.M. No. 04-9-07-SC providing that all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealed to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court, to be filed within 15 days from notice of the decision or final order of the Regional Trial Court, did not change the fact that BFB's appeal was not perfected. Further, BFB filed its Motion With Leave to Withdraw Notice of Appeal only on 20 April 2006 or almost two years after the issuance of A.M. No. 04-9-07-SC on 14 September 2004.

3. ID.; ID.; ID.; ID.; A PARTY WHO SEEKS TO EXERCISE THE RIGHT TO APPEAL MUST COMPLY WITH THE REQUIREMENT OF THE RULES, FAILING IN WHICH, THE RIGHT TO APPEAL IS LOST; LIBERAL CONSTRUCTION OF THE RULES MAY BE INVOKED ONLY IN SITUATIONS WHERE THERE IS SOME EXCUSABLE DEFICIENCY OR ERROR IN A PLEADING, BUT NOT WHERE ITS APPLICATION SUBVERTS THE ESSENCE OF THE PROCEEDING OR RESULTS IN THE UTTER DISREGARD OF THE RULES OF COURT. — Appeal is not a matter of right but a mere statutory privilege. The party who seeks to exercise the right to appeal must comply with the requirements of the rules, failing in which the right to appeal is lost. While the Court, in certain cases, applies the policy of liberal construction, it may be invoked only in situations where there is some excusable formal deficiency or error in a pleading, but not where its application subverts the essence of the proceeding or results in the utter disregard of the Rules of Court. In addition, BFB filed a motion for reconsideration of the 9 May 2006 Order of the RTC, Branch 138. Under Section 1, Rule 3 of the Interim Rules of Procedure on Corporate Rehabilitation, the proceedings shall be summary and non-adversarial in nature and a motion for new trial or reconsideration is a prohibited pleading. Hence, in view of the failure of BFB to perfect its appeal and its subsequent filing of a motion for reconsideration which is a prohibited pleading, the 10 October 2003 Order of the RTC, Branch 138, approving the rehabilitation plan had become final and executory.

APPEARANCES OF COUNSEL

Benedicto Versoza Gealogo & Burkley for petitioner.

Castillo Laman Tan Pantaleon & San Jose for International Finance Corp. and Nederlandse Financierings-Maatschappij Voor Ontwikkelingslanden N.V.

Villanueva Gabionza & De Santos and *R.R. Torralba & Associates* for Pryce Gases, Inc.

Batuhan Blando Concepcion & Francisco for the Rehabilitation Receiver.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the Decision[2] promulgated on 26 February 2008 and the Resolution[3] promulgated on 11 June 2009 of the Court of Appeals in CA-G.R. SP No. 98626.

The Antecedent Facts

Pryce Gases, Inc. (PGI) is a corporation engaged in the business of producing, selling and trading in all kinds of liquids, gases, and other chemicals, including but not limited to oxygen, acetylene, hydrogen, nitrogen, argon, carbon dioxide, carbonex, nitrous oxide, compressed air, helium, and other allied or related products. PGI is a debtor of the International Finance Corporation (IFC), an international organization and an affiliate of the International Bank of Reconstruction and Development (World Bank), and the Nederlandse Financierings-Maatschappij Voor Ontwikkelingslanden N.V. (FMO), a Dutch development bank engaged in promoting the expansion of private enterprise in emerging markets.

On 27 August 2002, IFC and FMO filed a Petition for Rehabilitation[4] with the Regional Trial Court of Makati due to the failure of PGI to service its debts as well as the refusal of PGI's parent company, the Pryce Corporation, to provide financial support to PGI. The case was raffled to Branch 142 and was docketed as SP Proc. No. 02-1016. The petition for rehabilitation was meant to preserve PGI's workforce and ensure that its cash

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 53-62. Penned by Associate Justice Agustin S. Dizon with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring.

[3] *Id.* at 98-100. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Pampio A. Abarintos and Antonio L. Villamor, concurring.

[4] *Id.* at 106-119.

flow would not be diverted to ill-advised ventures but would instead be channeled back to its operating capital to generate profits to pay off and retire debts. IFC and FMO proposed a financial restructuring that called for the conversion of dollar-denominated loans to peso and the splitting of the whole debt instrument into two categories: (1) the sustainable debt which would be rescheduled as a senior loan and secured by PGI's assets; and (2) the unsustainable portion to be transformed into redeemable preferred shares with voting rights. Under the proposal, senior loans shall be paid in five years while the shares are forecast to be redeemed in ten years. Based on the proposed financial restructuring, PGI's loan from BPI Family Savings Bank, Inc. (BFB) shall be paid in ten years as it was a non-MTI[5] creditor.

Presiding Judge Estela Perlas-Bernabe of RTC, Branch 142, inhibited herself from further hearing the case. The case was re-raffled to RTC, Branch 138.

The Ruling of the Trial Court

In an Order[6] dated 24 January 2003, the RTC, Branch 138, gave due course to the petition. The RTC, Branch 138, appointed Mr. Gener Mendoza (Mendoza) as Rehabilitation Receiver and directed him to submit his evaluation, study and recommendation on the proposed rehabilitation of PGI.

In a Manifestation[7] dated 29 May 2003, PGI informed RTC, Branch 138, that its parent company, Pryce Corporation, had offered to help through *dacion en pago* of its real estate assets to PGI's creditors, subject to certain terms and conditions.

In a Compliance[8] dated July 2003, Mendoza submitted his recommendation which, among others, states:

2. Creditors Secured with Non-Operating Assets. — Payment of principal and interest accrued as of August 31, 2002 by way of assets

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[5] Mortgage Trust Indenture.

[6] *Id.* at 136-138. Signed by Judge Sixto Marella, Jr.

[7] *Id.* at 139-144.

[8] *Id.* at 145-148.

already mortgaged to them at *dacion* values pegged to the average of two appraisals to be undertaken by Bangko Sentral-accredited appraisal firms who are nominated by the creditors in a meeting called for that purpose.[9]

In its Comment[10] to Mendoza's Compliance, BFB objected to *dacion en pago* as a mode of payment. BFB's exposure to PGI was secured by assets that were considered non-operating and not critical to the rehabilitation plan recommended by Mendoza. PGI and Pryce Corporation submitted a Partial Opposition[11] to the provision on income sharing of receiver's recommended revised rehabilitation plan but manifested their conformity to the other provisions of the plan.

In an Order[12] dated 10 October 2003, the RTC, Branch 138, approved the rehabilitation plan.

On 3 November 2003, BFB filed a notice of appeal.[13] PGI filed a motion to dismiss the appeal on the ground that BFB failed to perfect the appeal because of failure to file the record on appeal within the required period.

On 20 April 2006, before the RTC, Branch 138, could resolve PGI's motion to dismiss, BFB filed its Opposition (Re: Additional Argument in Support of Motion to Dismiss Appeal dated 27 July 2004) and Motion With Leave to Withdraw Notice of Appeal Dated 3 November 2003 and Instead Be Allowed to File a Petition for Review.[14]

In an Order[15] dated 9 May 2006, the RTC, Branch 138, dismissed BFB's appeal. The RTC, Branch 138, ruled that the law clearly states that in special proceedings, record on appeal

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[9] *Id.* at 146.

[10] *Id.* at 153-158.

[11] *Id.* at 159-168.

[12] *Id.* at 177-191.

[13] *Id.* at 192-193.

[14] *Id.* at 225-229.

[15] *Id.* at 237-238.

is required to perfect the appeal. The dispositive portion of the Order reads:

> WHEREFORE, the Motion to Dismiss Appeal filed by respondent Pryce Gases, Inc. is granted and the appeal of BPI Family Savings Bank, Inc. is dismissed. Consequently, no action need to be taken by the Court on the Motion for Leave to Withdraw Notice of Appeal dated 3 November 2003 and Instead Be Allowed to File a Petition for Review filed by BPI Family Savings Bank, Inc.
>
> SO ORDERED.[16]

BFB filed a motion for reconsideration of the 9 May 2006 Order. In its Order dated 16 February 2007,[17] the RTC, Branch 138, denied the motion on the ground that the Interim Rules of Procedure on Corporate Rehabilitation prohibit the filing of motions for reconsideration.

On 19 April 2007, BFB filed a petition for *certiorari*[18] before the Court of Appeals.

The Decision of the Court of Appeals

In its 26 February 2008 Decision, the Court of Appeals dismissed the petition. The Court of Appeals ruled that corporate rehabilitations are special proceedings and as such, appeals from the final order or decision therein should be by record on appeal in accordance with Section 2, Rule 41 of the 1997 Rules of Civil Procedure. The Court of Appeals ruled that when BFB filed the notice of appeal, the rule in force was the Interim Rules of Procedure on Corporate Rehabilitation which required the filing of a record on appeal. The Court of Appeals ruled that the mere filing of a notice of appeal would not suffice without the required record on appeal. The Court of Appeals further ruled that BFB's prayer that the petition be treated as filed under Rule 43 of the 1997 Rules of Civil Procedure lacked

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[16] *Id.* at 238.

[17] *Id.* at 252. Penned by Pairing Judge Jenny Lind R. Aldecoa-Delorino.

[18] Denominated as a Petition for Review but filed under Rule 65 of the Revised Rules of Civil Procedure.

merit because it was filed out of time. The Court of Appeals ruled that due to the dismissal of BFB's appeal and the denial of its motion for reconsideration by the RTC, Branch 138, the 10 October 2003 Order had become final and executory. Finally, the Court of Appeals ruled that BFB's petition was grossly defective because the verification was signed by an employee of the Bank of the Philippine Islands, a completely different entity from BPI Family Savings Bank, Inc.

BFB filed a motion for reconsideration. In its 11 June 2009 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court on the following grounds:

1. The Honorable Court of Appeals resolved an issue in a manner contrary to law and jurisprudence when it upheld the ruling of the lower court that dismissed the appeal of petitioner bank; and

2. The Honorable Court of Appeals resolved an issue in a manner contrary to law and jurisprudence when it upheld the ruling of the lower court which in effect forced and compelled petitioner bank to accept a *dacion en pago* arrangement against its consent.[19]

The Issue

The issue in this case is whether the Court of Appeals committed a reversible error in sustaining the RTC, Branch 138, in dismissing BFB's appeal.

The Ruling of this Court

The petition has no merit.

Section 5 of the Interim Rules on Corporate Rehabilitation provides that "(t)he review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court x x x." Under A.M. No. 00-8-10-SC, a petition for corporate rehabilitation is considered a special proceeding.[20] Thus, the

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[19] *Rollo*, p. 39.

[20] *New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City*, G.R. No. 165001, 31 January 2007, 513 SCRA 601.

period of appeal provided in paragraph 19(b) of the Interim Rules Relative to the Implementation of *Batas Pambansa Blg.* 129 for special proceedings shall apply,[21] that is, the period of appeal shall be 30 days since a record of appeal is required.[22] Thus:

> 19. *Period of Appeal.* —
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> (a) x x x
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> (b) In appeals in special proceedings in accordance with Rule 109 of the Rules of Court and other cases wherein multiple appeals are allowed, the period of appeal shall be thirty (30) days, a record of appeal being required.

On 14 September 2004, this Court issued A.M. No. 04-9-07-SC providing that all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealed to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court, to be filed within fifteen (15) days from notice of the decision or final order of the Regional Trial Court.[23] However, in this case, BFB filed a notice of appeal on 3 November 2003, before the effectivity of A.M. No. 04-9-07-SC. Hence, at the time of filing of BFB's appeal, the applicable mode of appeal is Section 2, Rule 41 of the 1997 Rules of Civil Procedure which provides:

> Sec. 2. *Modes of Appeal.* —
>
> (a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple

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[21] *Id.*

[22] *Id.*

[23] *Id.*

or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

Under Section 9, Rule 41 of the 1997 Rules of Civil Procedure, "(a) party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon approval of the record on appeal filed in due time."

In this case, BFB did not perfect the appeal when it failed to file the record on appeal. The filing of the notice of appeal on 3 November 2003 was not sufficient because at the time of its filing, the Rules required the filing of the record on appeal and not merely a notice of appeal. The issuance by the Court of A.M. No. 04-9-07-SC providing that all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealed to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court, to be filed within 15 days from notice of the decision or final order of the Regional Trial Court, did not change the fact that BFB's appeal was not perfected. Further, BFB filed its Motion With Leave to Withdraw Notice of Appeal only on 20 April 2006 or almost two years after the issuance of A.M. No. 04-9-07-SC on 14 September 2004.

Appeal is not a matter of right but a mere statutory privilege.[24] The party who seeks to exercise the right to appeal must comply with the requirements of the rules, failing in which the right to appeal is lost.[25] While the Court, in certain cases, applies the policy of liberal construction, it may be invoked only in situations where there is some excusable formal deficiency or error in a pleading, but not where its application subverts the essence of the proceeding or results in the utter disregard of the Rules of Court.[26]

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[24] *Cu-unjieng v. Court of Appeals*, 515 Phil. 568 (2006).

[25] *Stolt-Nielsen Services, Inc. v. NLRC*, 513 Phil. 642 (2005).

[26] *Dadizon v. Court of Appeals*, G.R. No. 159116, 30 September 2009, 601 SCRA 351.

In addition, BFB filed a motion for reconsideration of the 9 May 2006 Order of the RTC, Branch 138. Under Section 1, Rule 3 of the Interim Rules of Procedure on Corporate Rehabilitation, the proceedings shall be summary and non-adversarial in nature and a motion for new trial or reconsideration is a prohibited pleading. Hence, in view of the failure of BFB to perfect its appeal and its subsequent filing of a motion for reconsideration which is a prohibited pleading, the 10 October 2003 Order of the RTC, Branch 138, approving the rehabilitation plan had become final and executory.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 26 February 2008 Decision and the 11 June 2009 Resolution of the Court of Appeals in CA-G.R. SP No. 98626.

SO ORDERED.

Leonardo-de Castro,[*] *Brion, Perez,* and *Sereno, JJ.*, concur.

FIRST DIVISION

[G.R. No. 192591. June 29, 2011]

EFREN L. ALVAREZ, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019); CAUSING ANY UNDUE INJURY TO ANY PARTY, INCLUDING THE GOVERNMENT AND GIVING ANY PRIVATE PARTY ANY UNWARRANTED BENEFITS, ADVANTAGES OF PREFERENCES; THE

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[*] Designated acting member per Special Order No. 1006 dated 10 June 2011.

TWO MODES OF COMMISSION NEED NOT BE PRESENT AT THE SAME TIME, THE PRESENCE OF ONE WOULD SUFFICE FOR CONVICTION. — Petitioner argues that he cannot be held liable under Section 3(e) of R.A. No. 3019 since the Municipality of Muñoz did not disburse any money and the buildings demolished on the site of construction have been found to be a nuisance and declared structurally unsafe, as per notice issued by the Municipal Building Official. He points out that in fact, a demolition permit has been issued upon his application in behalf of the municipal government. API also paid ₱500,000.00 demolition/relocation fee. We disagree. This Court has clarified that the use of the disjunctive word "or" connotes that either act of (a) "causing any undue injury to any party, including the Government"; and (b) "giving any private party any unwarranted benefits, advantage or preference," qualifies as a violation of Section 3(e) of R.A. No. 3019, as amended. The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.

2. ID.; ID.; ID.; UNDER THE SECOND MODE OF THE CRIME, DAMAGE IS NOT REQUIRED AND IT SUFFICES THAT THE ACCUSED HAS GIVEN UNJUSTIFIED FAVOR OR BENEFIT TO ANOTHER, IN THE EXERCISE OF HIS OFFICIAL, ADMINISTRATIVE OR JUDICIAL FUNCTIONS. — The Court *En Banc* likewise held in *Fonacier v. Sandiganbayan* that proof of the extent or quantum of damage is not essential. It is sufficient that the injury suffered or benefits received can be perceived to be substantial enough and not merely negligible. Under the second mode of the crime defined in Section 3(e) of R.A. No. 3019 therefore, damage is not required. In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.

3. ID.; ID.; ID.; THE THIRD ELEMENT OF SECTION 3(e) OF R.A. NO. 3019 MAY BE COMMITTED THROUGH MANIFEST PARTIALITY, EVIDENT BAD FAITH OR GROSS EXCUSABLE NEGLIGENCE. — The third element of Section 3(e) of R.A. No. 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in

connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict. Damage or injury caused by petitioner's acts though alleged in the information, thus need not be proven for as long as the act of giving any private party unwarranted benefits, advantage or preference either through manifest partiality, evident bad faith or gross inexcusable negligence was satisfactorily established. Contrary to petitioner's assertion, the prosecution was able to successfully demonstrate that he acted with manifest partiality and gross inexcusable negligence in awarding the BOT contract to an unlicensed and financially unqualified private entity. R.A. No. 6957 as amended by R.A. No. 7718, requires that a BOT project be awarded to the bidder who has satisfied the minimum requirements, and met the technical, financial, organizational and legal standards provided in the BOT Law.

4. ID.; ID.; ID.; THE FACTS ESTABLISHED THAT PETITIONER GAVE UNWARRANTED BENEFITS, ADVANTAGE OR PREFERENCE TO A PROPONENT/CONTRACTOR WHO WAS NOT FINANCIALLY AND TECHNICALLY QUALIFIED FOR THE BILL OPERATE TRANSFER (BOT) PROJECT AWARDED TO IT, AND FOR NON-COMPLIANCE WITH THE REQUIREMENTS OF BIDDING AND CONTRACT APPROVAL FOR BOT PROJECTS UNDER EXISTING LAWS, RULES OR REGULATIONS. — Under the facts established, it is clear that petitioner gave unwarranted benefits, advantage or preference to API considering that said proponent/contractor was not financially and technically qualified for the BOT project awarded to it, and *without complying with the requirements of bidding and contract approval for BOT projects* under existing laws, rules and regulations. The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. As to "partiality," "bad faith," and "gross inexcusable negligence," we have explained the meaning of these terms, as follows: "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote

bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."

5. ID.; ID.; ID.; AS THE LOCAL CHIEF EXECUTIVE, PETITIONER IS NOT ONLY EXPECTED TO KNOW THE PROPER PROCEDURE IN THE BIDDING AND AWARD OF INFRASTRUCTURE CONTRACTS SUCH AS BOT PROJECTS, HE IS ALSO DUTY BOUND TO FOLLOW THE SAME AND HIS FAILURE TO DISCHARGE THIS DUTY CONSTITUTES GROSS AND INEXCUSABLE NEGLIGENCE. — We sustain and affirm the Sandiganbayan in holding that petitioner violated Section 3(e) of R.A. No. 3019, and that he cannot shield himself from criminal liability simply because the SB passed the necessary resolutions adopting the BOT project and authorizing him to enter into the MOA. We find no error or grave abuse in its ruling, which we herein quote: It is apparent that the unwarranted benefit in this case lies in the very fact that API was allowed to present its proposal without compliance of *[sic]* the requirements provided under the relevant laws and rules. To begin with, the municipal government never conducted a public bidding prior to the execution of the contract. The project was immediately awarded to the API without delay and without any rival proponents, when it was not qualified to participate in the first place. The legality and propriety of the agreement executed with the contractor is totally absent based on the testimonies of both the prosecution and the defense. x x x As the local chief executive, petitioner is not only expected to know the proper procedure in the bidding and award of infrastructure contracts such as BOT projects, he is also duty bound to follow the same and his failure to discharge this duty constitutes gross and inexcusable negligence.

6. ID.; ID.; ID.; PETITIONER CANNOT CLAIM DENIAL OF HIS RIGHT TO DUE PROCESS, AS HE HAD BEEN GIVEN

AMPLE OPPORTUNITY TO PRESENT EVIDENCE ON HIS DEFENSE IN THE PROCEEDINGS BEFORE THE OMBUDSMAN AND SANDIGANBAYAN. — We find nothing illegal in the reversal by the Ombudsman upon review of the September 9, 2002 resolution of the Office of the Deputy Ombudsman for Luzon which recommended the dismissal of the complaint-affidavit filed by Domiciano R. Laurena IV upon the ground that a similar criminal complaint filed by Castañeda had been dismissed in OMB-1-97-1885. The Office of the Ombudsman Chief Legal Counsel granted the petition for review filed by complainant Laurena IV and recommended that petitioner be indicted before the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019. It pointed out that the dismissal of OMB-1-97-1885 was premised on the authority of a local legislature to accept unsolicited proposals and enter into a BOT project under R.A. No. 6957 as amended by R.A. No. 7718, and the lack of any showing of undue injury to the Municipality of Muñoz as a result of the temporary work stoppage. However, the issue of lack of API's construction license was never brought out in the earlier case while in the present case, the PCAB attested to the fact that API is not a licensed contractor and petitioner's approval of API's proposal is a clear badge of giving unwarranted benefit, preference or advantage through manifest partiality, evident bad faith, or at the very least, gross inexcusable negligence. The OMB found that petitioner could have easily discovered such fact with basic prudence considering that a ₱240-million infrastructure was involved, but apparently he threw all caution to the wind and relied solely on the self-serving representation of API that it possesses the requisite contractor's license. This ruling of the OMB Chief Legal Counsel was affirmed upon review by the Special Prosecutor and approved by Ombudsman Merceditas N. Gutierrez on August 4, 2006. It may be recalled that on motion of petitioner, the Ombudsman even conducted a reinvestigation of the case pursuant to the January 15, 2007 directive of the Sandiganbayan. In a memorandum dated March 5, 2007, then Special Prosecutor Dennis M. Villa-Ignacio approved the finding of probable cause against the petitioner and the recommendation that the information already filed in this case, for which petitioner had already been arraigned, be maintained. Petitioner cannot claim denial of his right to due process, as he had been given ample opportunity to present

evidence on his defense in the proceedings before the Ombudsman and Sandiganbayan.

7. ID.; ID.; ID.; DAMAGES AWARDED BY THE SANDIGANBAYAN IS PROPER AND JUSTIFIED; THE TERM "UNDUE INJURY" IN THE CONTEXT OF SECTION (e) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT PUNISHING THE ACT OF "CAUSING UNDUE INJURY TO ANY PARTY" HAS A MEANING AKIN TO THE CIVIL CONCEPT OF "ACTUAL DAMAGES"; CASE AT BAR. — The term "undue injury" in the context of Section 3(e) of the Anti-Graft and Corrupt Practices Act punishing the act of "causing undue injury to any party," has a meaning akin to that civil law concept of "actual damage." Actual damage, in the context of these definitions, is akin to that in civil law. Article 2199 of the Civil Code provides that *except as provided by law or by stipulation*, one is entitled to an adequate compensation only for such pecuniary loss suffered by a party as he has duly proved. Liquidated damages, on the other hand, are those agreed upon by the parties to a contract, to be paid in case of a breach thereof. For approved BOT contracts, it is mandatory that a performance security be posted by the contractor/proponent in favor of the LGU in the form of cash, manager's check, cashier's check, irrevocable letter of credit or bank draft in the minimum amount of 2% of the total project cost. In case the default occurred during the project construction stage, the LGU shall likewise forfeit the performance security of the erring project proponent/contractor. x x x Had the requirement of performance security been complied with, there is no dispute that the Municipality of Muñoz would have been entitled to the forfeiture of performance security when API defaulted on its obligation to execute the construction contract, at the very least in an amount equivalent to 2% of the total project cost. Hence, said LGU is entitled to such damages which the law mandates to be incorporated in the BOT contract, the parties being at liberty only to stipulate the extent and amount thereof. To rule otherwise would mean a condonation of blatant disregard and violation of the provisions of the BOT law and its implementing rules and regulations which are designed to protect the public interest in transactions between government and private business entities. While petitioner claims to have entered into a compromise agreement as authorized by the SB and

approved by the trial court, no evidence of such judicial compromise was submitted before the Sandiganbayan.

8. ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE OMBUDSMAN IS NOT PRECLUDED FROM ORDERING ANOTHER REVIEW OF A COMPLAINT FOR HE OR SHE MAY REVOKE, REPEAL OR ABROGATE THE ACTS OR PREVIOUS RULINGS OF A PREDECESSOR IN OFFICE. — No grave abuse of discretion was committed by the Ombudsman in reversing the previous dismissal of a similar criminal complaint against the petitioner involving the anomalous award of the BOT contract to API. Indeed, the Ombudsman is not precluded from ordering another review of a complaint, for he or she may revoke, repeal or abrogate the acts or previous rulings of a predecessor in office. Thus we held in *Trinidad v. Office of the Ombudsman*: Petitioner's arguments — that *res judicata* applies since the Office of the Ombudsman twice found no sufficient basis to indict him in similar cases earlier filed against him, and that the *Agan* cases cannot be a supervening event or evidence *per se* to warrant a reinvestigation on the same set of facts and circumstances — do not lie. *Res judicata* is a doctrine of civil law and thus has no bearing on criminal proceedings. But even if petitioner's argument were to be expanded to contemplate "*res judicata* in prison grey" or the criminal law concept of double jeopardy, this Court still finds it inapplicable to bar the reinvestigation conducted by the Office of the Ombudsman. For **the dismissal of a case during preliminary investigation does not constitute double jeopardy, preliminary investigation not being part of the trial.** Insisting that the case should be barred by the prior Joint Resolution of the Ombudsman, petitioner posits that repeated investigations are oppressive since he as respondent and other respondents would be made to suffer interminable prosecution since resolutions dismissing complaints would perpetually be subject to reopening at any time and by any party. Petitioner particularly points out that no new evidence was presented at the reinvestigation. Petitioner's position fails to impress. **The Ombudsman is not precluded from ordering another review of a complaint, for he or she may revoke, repeal or abrogate the acts or previous rulings of a predecessor in office**. And *Roxas v. Hon. Vasquez* teaches that **new matters or evidence are not prerequisites for a reinvestigation, which is simply**

a chance for the prosecutor, or in this case the Office of the Ombudsman, to review and re-evaluate its findings and the evidence already submitted.

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

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE PHILIPPINE BOT (BUILD-OPERATE-TRANSFER) LAW (REPUBLIC ACT NO. 6957, AS AMENDED BY REPUBLIC ACT NO. 7718); TWO WAYS ON HOW THE PRIVATE SECTOR MAY TAKE ON A PROJECT; EXPLAINED. — The BOT Law provides two ways on how the private sector may take on a project, to wit: (*a*) through public bidding; and (*b*) through unsolicited proposals. In the first way, an identified project is immediately thrown open to the public for competition, while in the second, a proposal is first submitted before the public is given the chance to compete. If the Government chooses to transact indiscriminately with the public through regular bidding, the pertinent rules on unsolicited proposals find no application. Conversely, if at the outset and to the exclusion of the public, negotiations take place between the Government and a specific person, the ordinary bidding procedures are not at play.

2. ID.; ID.; ID.; UNSOLICITED PROPOSALS FOR PROJECTS MAY BE ACCEPTED BY ANY GOVERNMENT AGENCY OR LOCAL GOVERNMENT UNIT ON A NEGOTIATED BASIS; CONDITIONS. — Unsolicited proposals for projects may be accepted by any government agency or local government unit on a negotiated basis, provided that the following conditions are all met, namely: (*a*) such projects involved a new concept or technology and/or are not part of the list of priority projects; (*b*) no direct government guarantee, subsidy or equity is required; (*c*) the government agency or local government unit has invited comparative or competitive proposals by publication for three consecutive weeks in a newspaper of general circulation, and no other proposal is received for a period of 60 working days; and (*d*) in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within 30 working days.

3. ID.; ID.; ID.; DIRECT NEGOTIATIONS AND UNSOLICITED PROPOSALS; ANY PROPOSAL, INVITED OR NOT,

THAT IS INTRODUCED WHERE THE GOVERNMENT HAS NO PRIOR INTENTION OF CONDUCTING A PUBLIC BIDDING MUST STILL BE CATEGORIZED AS "UNSOLICITED"; CASE AT BAR. — Rule 9 of the Implementing Rules and Regulations (IRR) of the BOT Law has the significant provisions on direct negotiations and unsolicited proposals. x x x Section 9.1, Direct Negotiation, actually envisages an ordinary public bidding in which only a lone bidder ends up to be compliant. The offer to the public and the opportunity for competition, two of the three principles in public bidding, precede the negotiation. Under the BOT Law, therefore, the private sector may become a partner of the Government in its infrastructure projects only either by participating in a regular bidding or by presenting an unsolicited proposal, where there is likewise a subsequent bidding. The mere fact that the SB invited API did not put API's proposal outside the purview of an unsolicited proposal. x x x Accordingly, any proposal, invited or not, that is introduced where the Government has no prior intention of conducting a public bidding must still be categorized as "unsolicited." This interpretation will not prove disastrous inasmuch as the law itself has provided adequate safeguards. Moreover, the abhorred capricious awarding of a project to a preferred party is effectively hindered by the mandate for a subsequent invitation for comparative proposals.

4. ID.; ID.; ID.; ID.; FINDINGS OF LACK OF PRIOR APPROVAL BY THE INVESTMENT COORDINATING COMMITTEE (ICC) AND FAILURE TO SUBMIT AFFIDAVIT OF PUBLISHER OF *PINOY* TO CONFIRM ITS BEING A NEWSPAPER OF GENERAL CIRCULATION; NOT ESTABLISHED TO JUSTIFY THE PRESENCE OF THE ELEMENTS OF THE CRIME CHARGED; CASE AT BAR. — I believe that we must thoroughly revisit our finding about the lack of prior approval by the ICC and about the failure of the petitioner to submit the affidavit of the publisher of *Pinoy* tabloid that would confirm its being a newspaper of general circulation. There was no basis for the finding. x x x **the finding was unfortunate because it was not for the petitioner to prove that he had complied with such requirements, but rather for the Prosecution to establish the fact of non-compliance with the requirements in a degree that would justify the presence of the elements of the crime charged.**

With the Wag-Wag Shopping Mall being a non-priority project, and API's proposal being unsolicited, what then applied was the requirement of ICC approval prior to the negotiation with API as the proponent. **There being no evidence on record that proved non-compliance with the requirements, the Court thus had no real and proper factual bases to find and hold that Alvarez had failed to prove compliance.** x x x [T]he petitioner's failure to present the affidavit of the publisher attesting to *Pinoy's* being a newspaper of general circulation was fatal to the cause of the Prosecution, but not to the cause of the Defense. There was in favor of the petitioner the presumption of regularity in the performance of official duty from his availing of the publication services of *Pinoy* as a newspaper of general circulation. The presumption could be rebutted only by the Prosecution adducing clear and convincing affirmative evidence of irregularity or failure to perform a duty. Towards that end, every reasonable intendment was to be made in support of the presumption; in case of any doubt as to an officer's act being lawful or unlawful, the construction should be in favor of its lawfulness. Without the Prosecution adducing such rebutting evidence, the presumption became conclusive herein.

5. CRIMINAL LAW; VIOLATION OF SECTION 3 (E) OF REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); ELEMENTS; ELUCIDATED. — The State must prove the following essential elements of Section 3(*e*) of Republic Act No. 3019 offense, as follows: 1. The accused is a public officer discharging administrative, judicial, or official functions; 2. The accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and 3. The action of the accused caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. x x x As to the second element (that the accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence), which involve the three modes of committing the crime, we have enunciated in *Fonacier v. Sandiganbayan* that the three modes are distinct and different from each other.

6. ID.; ID.; ID.; MANIFEST PARTIALITY OR GROSS INEXCUSABLE NEGLIGENCE; NOT PRESENT IN CASE AT BAR. — Section 3(*e*) of Republic Act No. 3019 requires

that partiality must be manifest. But the petitioner's actuations could not be categorized as manifestly partial. His *minimal* participation in the transaction could not be characterized by bias. His seeking the intervention of both the SB and the PBAC before taking action in favor of API belied any partiality towards API. He opted to share with the members of the SB and the PBAC the responsibility for making any decision on the project. All these showed that he himself sought and put in place stumbling blocks that did not at all make it easy and simple for API to get the project. x x x Anent negligence, any omissions that the petitioner committed along the way were due only to either mere inadvertence, or simple over-eagerness to proceed with a worthwhile project, or placing too much confidence in the declarations of subordinates and Atty. Marciano. **I submit that the omissions would amount, at worst, only to gross negligence, which is want or absence of reasonable care and skill.** Section 3(*e*) of Republic Act No. 3019 required that the gross negligence must also be inexcusable. In other words, the gross negligence should have no excuse.

7. ID.; ID.; ID.; THE INJURY CONTEMPLATED UNDER THE LAW IS ACTUAL DAMAGE; NO SUCH FINDINGS IN CASE AT BAR; EXPLAINED. — That the Municipality of Muñoz suffered undue injury from the non-performance of the contractual obligations of API was speculative and unwarranted. The injury that Section 3(*e*) of Republic Act No. 3019 contemplates is **actual damage** as the term is understood under the *Civil Code*. In *Llorente, Jr. v. Sandiganbayan*, the Court made this concept of undue injury very clear. x x x **What the decision contained on the requirement of actual damage were mere *conclusions of both fact and law*. But such conclusions did not satisfactorily meet the standard set in *Llorente, Jr.* to the effect that: x x x damages must not only be capable of proof, but must actually be proven with a reasonable degree of certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork. They cannot include speculative damages which are too remote to be included in an accurate estimate of the loss or injury. Speculative damages are too remote to be included in an accurate estimate of damages. In determining actual damages, the Court cannot rely on speculation, conjecture or guesswork as to the amount. Without the actual proof of**

loss, the award of actual damages becomes erroneous. To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. The Court cannot simply rely on speculation, conjecture, or guesswork in determining the amount of damages. Without any factual basis, it cannot be granted.

8. ID.; ID.; ID.; UNWARRANTED BENEFITS, WHEN NOT PRESENT; CASE AT BAR. — The proponent undertakes to build and operate the project, and to transfer the project to the Government after a certain period of time without need of payment to the proponent. The scheme benefits the proponent only after the finished project starts to operate, and during the operation the proponent earns and recoups its investments. x x x Yet, API did not get any benefit from the project because it did not get to finish building the Wag-Wag Shopping Mall, let alone to operate it. Rather to the contrary, API was even compelled to shell out ₱500,000.00 to the Municipality for the demolition of the dilapidated buildings. The word *unwarranted* means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. In that regard, it is significant that the SB and the PBAC gave its official support to the project. *Advantage* means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. *Preference* signifies priority or higher evaluation or desirability; choice or estimation above another.

APPEARANCES OF COUNSEL

Aguirre Aportadera Gavero Sandico & Associates for petitioner.

Office of the Special Prosecutor (Sandiganbayan) for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to

reverse and set aside the Decision[1] dated November 16, 2009 and Resolution[2] dated June 9, 2010 of the Sandiganbayan's Fourth Division finding the petitioner guilty beyond reasonable doubt of violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Petitioner Efren L. Alvarez, at the time of the subject transaction, was the Mayor of the Municipality (now Science City) of Muñoz, Nueva Ecija. In July 1995, the *Sangguniang Bayan* (SB) of Muñoz under Resolution No. 136, S-95 invited Mr. Jess Garcia, President of the Australian-Professional, Inc. (API) in connection with the municipal government's plan to construct a four-storey shopping mall ("Wag-wag Shopping Mall"), a project included in its Multi-Development Plan. Subsequently, it approved the adoption of the project under the Build-Operate-Transfer (BOT) arrangement in the amount of ₱240 million, to be constructed on a 4,000-square-meter property of the municipal government which is located at the back of the Municipal Hall. API submitted its proposal on November 7, 1995.[3]

On February 9, 1996, an Invitation for proposals to be submitted within thirty (30) days, was published in *Pinoy* tabloid. On April 12, 1996, the Pre-qualification, Bids and Awards Committee (PBAC) recommended the approval of the proposal submitted by the lone bidder, API. On April 15, 1996, the SB passed a resolution authorizing petitioner to enter into a Memorandum of Agreement (MOA) with API for the project. Consequently, on September 12, 1996, petitioner signed the MOA with API, represented by its President Jesus V. Garcia, for the construction of the Wag-Wag Shopping Mall under the BOT scheme whereby API undertook to finish the construction within 730 calendar days.[4]

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[1] *Rollo*, pp. 53-85. Penned by Associate Justice Jose R. Hernandez with Associate Justices Gregory S. Ong and Roland B. Jurado, concurring.

[2] *Id.* at 109-117.

[3] *Id.* at 153-155, 166-195.

[4] *Id.* at 147-152.

On February 14, 1997, the groundbreaking ceremony was held at the site once occupied by government structures which included the old Motor Pool, the old Health Center and a semi-concrete one-storey building that housed the Department of Agriculture, BIR Assessor, old Post Office, Commission on Elections and Department of Social Welfare and Development. These structures were demolished at the instance of petitioner to give way to the construction project. Thereafter, API proceeded with excavation on the area (3-meter deep) and a billboard was put up informing the public about the project and its contractor. However, no mall was constructed as API stopped work within just a few months.

On August 10, 2006, petitioner was charged before the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019 (SB-06-CRM-0389), under the following Information:

> That on or about 12 September 1996, and sometime prior or subsequent thereto, in the then Municipality (now Science City) of Muñoz, Nueva Ecija, and within the jurisdiction of this Honorable Court, the above-named accused EFREN L. ALVAREZ, a high ranking public official, being then the Mayor of Muñoz, Nueva Ecija, taking advantage of his official position and while in the discharge of his official or administrative functions, and committing the offense in relation to his office, acting with evident bad faith or gross inexcusable negligence or manifest partiality did then and there willfully, unlawfully and criminally give the Australian-Professional Incorporated (API) unwarranted benefits, advantage or preference, by awarding to the latter the contract for the construction of Wag-Wag Shopping Mall in the amount of Two Hundred Forty Million Pesos (Php 240,000,000.00) under a Buil[d]-Operate-Transfer Agreement, notwithstanding the fact that API was and is not a duly-licensed construction company as per records of the Philippine Construction Accreditation Board (PCAB), which construction license is a pre-requisite for API to engage in construction of works for the said municipal government and that API does not have the experience and financial qualifications to undertake such costly project among others, to the damage and prejudice of the public service.
>
> CONTRARY TO LAW.[5]

[5] Records (Vol. 1), pp. 1-2.

On September 22, 2006, petitioner was duly arraigned, pleading not guilty to the charge.

At the trial, petitioner testified that during his term as Mayor of Muñoz, the municipal government planned to borrow money from GSIS to finance the proposed Wag-Wag Shopping Mall project. He learned about API when then Vice-Mayor Romeo Ruiz and other SB members showed him a copy of publication/ advertisement in the Manila Bulletin and Business Bulletin showing that API was then building similar BOT projects for construction of shopping malls in Lemery, Batangas (₱150 million) and in Calamba, Laguna (₱300 million). Because it will not entail government funds and is an alternative to availment of GSIS loan, petitioner appointed Vice-Mayor Ruiz and other SB members to study the matter. A resolution was subsequently passed by the SB inviting API for detailed information on their mall projects. Thereafter, the SB approved the construction of Wag-Wag Shopping Mall under BOT scheme, which was favorably endorsed by the Municipal Development Council. A public hearing was also conducted by Municipal Engineer Armando E. Miranda. On November 8, 1995, the municipal government received the "unsolicited proposal" of API for the construction of Wag-Wag Shopping Mall. For three weeks, an Invitation to Bid was published in the *Pinoy* tabloid. But it was the lone bidder, API, whose proposal was eventually recommended by the PBAC and approved by the SB.[6]

Petitioner emphasized that not a single centavo was spent by the municipal government for the Wag-Wag Shopping Mall project. It was an unsolicited proposal under the BOT law. API was required to submit pre-qualification statements containing, among others, their accomplished projects. Eventually the SB passed a resolution authorizing him to enter into the MOA with API. The municipal government issued the notice of award to API on September 16, 1996 in which it required the contractor to post notices prior to the start of the project and to submit other requirements such as performance bond. However, API

[6] TSN, April 8, 2008, pp. 5-24.

did not comply as its counsel, Atty. Lydia Y. Marciano said these are not required under the BOT law (R.A. No. 7718) since there will be no government undertaking, equity or subsidy in the project. After securing an environmental clearance certificate from DENR, the groundbreaking ceremony was held on February 1, 1997. API, as promised, paid ₱500,000.00 as disturbance or relocation fee considering that the municipal government has caused the demolition of old buildings at the site. A certification[7] of such payment was issued by City Treasurer Luzviminda P. De Leon and City Accountant June Franklyn A. Fernandez on February 5, 2007. The materials were then utilized for the construction of the new motor pool and new City Library. Thereafter, API began excavating an area of 30 x 30 meters (1,000 sq. m.), about 3 meters deep. However, only the sales office was constructed. The project was not completed and API gave as excuse the 1997 financial crisis. They wrote a letter to Mr. Garcia reminding him of the 730-days completion period but then he was nowhere to be found and did not answer the letter. Hence, the SB authorized him to file a case against API, and later also granted him authority to enter into a compromise agreement in Civil Case No. 161-SD 98). Their compromise agreement was approved but they could not find a copy anymore because the Regional Trial Court at Balok, Sto. Domingo, Nueva Ecija where the settlement was done, was burned down.[8]

On cross-examination, petitioner claimed that had the municipal government then borrowed funds from the GSIS, they envisioned annual return of ₱5 million from a ₱40 million loan for a modest mall (but for an area of 4,000 square meters, the loan would have to be ₱80 million). For a period of 8 years, the municipality would have an income of ₱40 million and the GSIS can be paid. As to the contractor's financial capability, it presented a credit line of ₱150 million to ₱250 million for Australian-Professionals Realty, Inc. (APRI). Petitioner clarified that API and APRI were one and the same entity having the same board of directors, but when asked if he verified this from the Securities and Exchange

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[7] *Rollo*, p. 146.

[8] TSN, April 8, 2008, pp. 24-50.

Commission (SEC), he answered in the negative. Petitioner asserted that it was the Vice-Mayor who is accountable for this project as he headed the working panel. As to whether API was a licensed contractor, he admitted that he did not verify this before awarding the BOT contract involving an infrastructure project. He insisted that the Wag-Wag Shopping Mall Project, being an unsolicited proposal under BOT law, is exempt from the pre-qualification requirement although they still conducted it. As far as he knows, the project proponent in this case is the Municipality of Muñoz. However, petitioner admitted that he is not familiar with the BOT law. He also admitted that the Invitation published stated a shorter period of submission of proposal (30 days instead of 60 days provided under the BOT law) and that he just signed the said notice without consulting their legal counsel.[9]

On November 16, 2009, the Sandiganbayan rendered judgment convicting the petitioner after finding that: (1) petitioner railroaded the project; (2) there was no competitive bidding; (3) the contractor was totally unqualified to undertake the project; and (4) the provisions of the BOT law and relevant rules and regulations were disregarded and not followed. The said court also found that the municipal government suffered damage and prejudice with the resulting loss of several of its buildings and offices, and having deployed its resources including equipment, personnel and financial outlay for fuel and repairs in the demolition of the said structures. Damage suffered by the municipal government was quantified at ₱4.8 million, or 2% of the total project cost of ₱240 million, representing the amount of liquidated damages due under the performance security had the same been posted by the contractor as required by law. As to the allegation of conspiracy, the Sandiganbayan held that such was adequately shown by the evidence, noting that this is one case where the Ombudsman should have included the entire Municipal Council in the information for the latter had conspired if not abetted all the actions of the petitioner in his dealings with API to the damage and prejudice of the municipality.

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[9] *Id.* at 53-77.

The dispositive portion of the decision reads:

> ACCORDINGLY, accused Efren L. Alvarez is found guilty beyond reasonable doubt for *[sic]* violation of Section 3 (e) of Republic Act No. 3019 and is sentenced to suffer in prison the penalty of 6 years and 1 month to 10 years. He also has to suffer perpetual disqualification from holding any public office and to indemnify the City Government of Muñoz (now Science), Nueva Ecija the amount of Four Million Eight Hundred Thousand Pesos (Php 4,800,000.00) less the Five Hundred Thousand Pesos (Php 500,000.00) API earlier paid the municipality as damages.
>
> Costs against the accused.
>
> SO ORDERED.[10]

The Sandiganbayan likewise denied petitioner's motion for reconsideration. It ruled that upon examination of Section 4-A of R.A. No. 6957 as amended by R.A. No. 7718, it was clear that petitioner, with manifest partiality and gross inexcusable negligence, failed to comply with the requirements and procedures for competitive bidding in unsolicited proposals. It also reiterated that API was a contractor and not a mere project proponent; hence, the license requirement applies to it. Petitioner's defense that he merely executed the resolutions of the SB was also rejected because as Chief Executive of the Municipality of Muñoz, it was his duty to protect the credits, rights and properties of the municipality and to exercise efficient, effective and economical governance for the general welfare of the municipality and its inhabitants under Section 444, R.A. No. 7160 (Local Government Code of 1991). Significant acts of the petitioner also showed that he opted to enter into the contract with API despite reckless disregard of the law.

Hence, this petition raising the following issues:

1. Whether or not the Honorable Sandiganbayan failed to observe the requirement of proof beyond reasonable doubt in convicting the Accused-Petitioner;

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[10] *Rollo,* p. 84.

2. Whether or not the Honorable Sandiganbayan failed to appreciate the legal intent of the BOT project;

3. Whether or not the Honorable Sandiganbayan utterly failed to appreciate that the BOT was a lawful project of the Sangguniang Bayan and not the project of the Mayor Accused-Petitioner herein; and

4. Whether or not the Honorable Sandiganbayan utterly failed to appreciate that there was no damage on the then Municipality of Muñoz as contemplated by law, to warrant the conviction of the Accused-Petitioner.[11]

We deny the petition.

Petitioner was charged with violation of Section 3(e) of R.A. No. 3019. To be convicted under the said provision, the following elements must be established:

1. The accused must be a public officer discharging administrative, judicial or official functions;

2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[12]

In this case, the information alleged that while being a public official and in the discharge of his official functions and taking advantage of such position, petitioner "acting with evident bad faith or gross inexcusable negligence or manifest partiality" unlawfully gave API "unwarranted benefits, advantage or preference" by awarding to it the contract for the construction of the Wag-Wag Shopping Mall under the BOT scheme despite the fact that it was not a licensed contractor and "does not have the experience and financial qualifications to undertake such

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[11] *Id.* at 20.

[12] *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, 386.

costly project, among others, to the damage and prejudice of the public service."

Petitioner argues that he cannot be held liable under Section 3(e) of R.A. No. 3019 since the Municipality of Muñoz did not disburse any money and the buildings demolished on the site of construction have been found to be a nuisance and declared structurally unsafe, as per notice issued by the Municipal Building Official. He points out that in fact, a demolition permit has been issued upon his application in behalf of the municipal government. API also paid ₱500,000.00 demolition/relocation fee.

We disagree.

This Court has clarified that the use of the disjunctive word "or" connotes that either act of (a) "causing any undue injury to any party, including the Government"; and (b) "giving any private party any unwarranted benefits, advantage or preference," qualifies as a violation of Section 3(e) of R.A. No. 3019, as amended.[13] The use of the disjunctive "or" connotes that the two modes need not be present at the same time. In other words, the presence of one would suffice for conviction.[14]

As we explained in *Bautista v. Sandiganbayan*[15]:

Indeed, Sec. 3, par. (e), RA 3019, as amended, provides as one of its elements that the public officer should have acted by causing any undue injury to any party, including the government, *or* by giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Sec. 3, par. (e),

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[13] *Santos v. People*, G.R. No. 161877, March 23, 2006, 485 SCRA 185, 194-195, citing *Uy v. Sandiganbayan*, G.R. No. 100334, December 5, 1991 and *Santiago v. Garchitorena*, G.R. No. 109266, December 2, 1993, 228 SCRA 214, 222-223.

[14] *Sison v. People*, G.R. Nos. 170339 & 170398-403, March 9, 2010, 614 SCRA 670, 681, citing *Quibal v. Sandiganbayan (Second Division)*, G.R. No. 109991, May 22, 1995, 244 SCRA 224.

[15] G.R. No. 136082, May 12, 2000, 332 SCRA 126, 135.

or as aptly held in *Santiago*, as two (2) different modes of committing the offense. This does not, however, indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under *either* mode or under *both*.[16] (Underscoring supplied.)

The Court *En Banc* likewise held in *Fonacier v. Sandiganbayan*[17] that proof of the extent or quantum of damage is not essential. It is sufficient that the injury suffered or benefits received can be perceived to be substantial enough and not merely negligible.[18] Under the second mode of the crime defined in Section 3(e) of R.A. No. 3019 therefore, damage is not required. In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.[19]

The third element of Section 3(e) of R.A. No. 3019 may be committed in three ways, *i.e.*, through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of *any* of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A. No. 3019 is enough to convict.[20] Damage or injury caused by petitioner's acts though alleged in the information, thus need not be proven for as long as the act of giving any private party unwarranted benefits, advantage or preference either through manifest partiality, evident bad faith or gross inexcusable negligence was satisfactorily established. Contrary to petitioner's assertion, the prosecution was able to successfully demonstrate that he acted with manifest partiality and gross inexcusable negligence in awarding the BOT contract to an unlicensed and financially unqualified private entity.

R.A. No. 6957 as amended by R.A. No. 7718, requires that a BOT project be awarded to the bidder who has satisfied the

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[16] As cited in *Cabrera v. Sandiganbayan, supra* note 12.

[17] G.R. Nos. 50691, 52263, 52766, 52821, 53350 & 53397, December 5, 1994, 238 SCRA 655.

[18] *Id.* at 688. See also *Soriquez v. Sandiganbayan*, G.R. No. 153526, October 25, 2005, 474 SCRA 222, 230.

[19] *Sison v. People, supra* 14 at 682.

[20] *Fonacier v. Sandiganbayan, supra* note 18; *Sison v. People, id.* at 679.

minimum requirements, and met the technical, financial, organizational and legal standards provided in the BOT Law. Section 5 of said law provides:

> SEC. 5. *Public Bidding of Projects.* — x x x
>
> In the case of a build-operate-and-transfer arrangement, the contract shall be awarded to the bidder who, having satisfied the **minimum financial, technical, organizational and legal standards required by this Act**, has submitted the lowest bid and most favorable terms for the project, based on the present value of its proposed tolls, fees, rentals and charges over a fixed term for the facility to be constructed, rehabilitated, operated and maintained according to the prescribed minimum design and performance standards, plans and specifications. x x x (Emphasis supplied.)

Foremost of these minimum legal standards is the license accreditation of a contractor required under R.A. No. 4566 otherwise known as the Contractors' License Law. The Philippine Licensing Board for Contractors created under said law is mandated to ensure that prospective contractors possess "at least two years of experience in the construction industry, and knowledge of the building, safety, health and lien laws of the Republic of the Philippines and the rudimentary administrative principles of the contracting business" which it deems necessary "for the safety of the contracting business of the public."[21] In fact, a contractor must show that he is licensed by the board before his bid will be considered.[22] As a general rule therefore, the prospective contractor for government infrastructure projects must have been duly licensed as such pursuant to R.A. No. 4566. API not being a licensed contractor as per the Certification[23] issued by Philippine Contractors Accreditation Board (PCAB) board secretary Aaron C. Tablazon, is thus not qualified to participate in the bidding and much less be awarded the BOT project for the construction of Wag-Wag Shopping Mall.

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[21] Sec. 20, R.A. 4566.

[22] Sec. 36, R.A. 4566.

[23] Exhibit "H", Prosecution's Exhibits.

Petitioner claimed that there was compliance with the law saying that API was not a contractor but a mere project proponent, for which a license is not a requisite to undertake BOT projects. But the Sandiganbayan correctly rejected this theory as the clear terms of the MOA itself confirm that API itself undertook to construct the Wag-Wag Shopping Mall, thus:

TERMS AND CONDITION

I. THE PROJECT SITE

1. The FIRST PARTY [Municipality of Muñoz] shall make available unto the SECOND PARTY a FOUR THOUSAND (4,000) SQUARE METERS lot located at Muñoz, Nueva Ecija where the SECOND PARTY [API] **shall build** for the FIRST PARTY a commercial building in accordance with this Memorandum of Agreement, RA 6957 AND RA 7718 as well as RA 7160 otherwise known as the Local Government Code of 1991.

II. PLANS AND SPECIFICATIONS

I. The commercial building, to be known as the WAG-WAG SHOPPING MALL, **shall be constructed** by the SECOND PARTY strictly in accordance with plans, specifications, engineering and construction designs prepared by the SECOND PARTY and duly reviewed and approved by the FIRST PARTY. x x x

x x x x x x x x x

III. CONSTRUCTION

x x x x x x x x x

3. The FIRST PARTY shall issue a written Notice to Proceed in favor of the SECOND PARTY. The SECOND PARTY, shall **mobilize** within 60 days from clearing of the site for official groundbreaking.

4. The SECOND PARTY hereby warrants that it shall **finish the construction** of the WAG-WAG SHOPPING MALL within SEVEN HUNDRED THIRTY (730) CALENDAR DAYS counted from the date of the official groundbreaking.

x x x x x x x x x

6. x x x Compliance with all existing laws, rules and regulations regarding the **construction of the project** shall be [the] responsibility of the SECOND PARTY itself to save and hold the FIRST PARTY harmless from any and all liabilities in respect thereto or arising from violations thereof.

IV. BUILD-OPERATE-AND-TRANSFER SCHEME

1. The WAG-WAG SHOPPING MALL be **constructed by** the SECOND PARTY for the FIRST PARTY in accordance with this Memorandum of Agreement and with the Build-Operate-and-Transfer Scheme outlined RA 6957 and RA 7718. This Agreement is of course subject to the provisions of RA 7160 and other pertinent laws.

x x x x x x x x x[24]

Section 2 of R.A. No. 6957 as amended by R.A. No. 7718, defined the terms "Contractor" and "Project Proponent" as follows:

(k) *Project Proponent* — The private sector entity which shall have contractual responsibility for the project and which shall have an adequate financial base to implement said project consisting of equity and firm commitments from reputable financial institutions to provide, upon award, sufficient credit lines to cover the total estimated cost of the project.

(l) *Contractor* — Any entity accredited under Philippine laws which may or may not be the project proponent and which shall undertake the actual construction and/or supply of equipment for the project.

Aside from the clear language of the MOA, the attendant circumstances unmistakably showed that API is *both* the project proponent and contractor of the BOT project, as it was the one who submitted the proposal and bid to the SB, through its President executed the MOA with petitioner, deployed manpower and equipment for the clearing of the site, conducted groundbreaking, performed excavation and initial construction works, and took responsibility for the stoppage and non-completion of the project

[24] *Rollo*, pp. 147-149.

when it entered into a compromise with the Municipality of Muñoz. It is to be noted that even as project proponent, API failed to meet the minimum financial standard considering that it has no adequate financial base to implement the Wag-Wag Shopping Mall project. API's paid-up capital was only ₱2.5 million, while its stand-by credit line issued by Brilliant Star Capital Lending Co., Inc. was only for the amount of ₱150 million, way below the ₱240 million total project cost.

While API's proposal passed through the pre-qualification stage, it failed to submit, except for the SEC registration certificate, a complete set of documents required for a BOT project, in accordance with the BOT Law Implementing Rules and Regulations (IRR):

Sec. 5.4. ***Pre-qualification Requirements***. — To pre-qualify, a project proponent must comply with the following requirements:

a. *Legal Requirements*

i. For projects to be implemented under the BOT scheme whose operations require a public utility franchise, the project proponent and the facility operator must be a Filipino or, if a corporation, must be duly registered with the Securities and Exchange Commission (SEC) and owned up to at least sixty percent (60%) by Filipinos.

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v. If the contractor to be engaged by the project proponent to undertake the construction works of the project under bidding needs to be pre-identified as prescribed in the published Invitation to Pre-qualify and Bid and is a Filipino, it must be **duly licensed and accredited by the Philippine Contractors Accreditation Board (PCAB).** However, if the contractor is a foreigner, PCAB registration will not be required at pre-qualification stage, rather it will be one of the contract milestones.

b. *Experience or Track Record:* The proponent-applicant must possess adequate experience in terms of the following:

i. *Firm Experience:* By itself or through the member-firms in case of a joint venture/consortium or through a contractor(s)

which the project proponent may have engaged for the project, the project proponent and/or its contractor(s) must have successfully undertaken a project(s) similar or related to the subject infrastructure/development project to be bid. The individual firms and/or their contractor(s) may individually specialize on any or several phases of the project(s). A joint venture/consortium proponent shall be evaluated based on the individual or collective experience of the member-firms of the joint venture/consortium and of the contractor(s) that it has engaged for the project.

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vi. *Key Personnel Experience:* The key personnel of the proponent and/or its contractor(s) must have sufficient experience in the relevant aspect of schemes similar or related to the subject project, as specified by the Agency/LGU.

e. *Financial Capability:* The project proponent must have **adequate capability to sustain the financing requirements** for the detailed engineering design, construction and/or operation and maintenance phases of the project, as the case may be. For purposes of pre-qualification, this capability shall be measured in terms of:

(i) proof of the ability of the project proponent and/or the consortium to provide a **minimum amount of equity** to the project measured in terms of the net worth of the company or in the case of joint ventures or consortia the combined net worth of members or a set-aside deposit equivalent to the minimum equity required, and

(ii) a **letter testimonial from reputable banks** attesting that the project proponent and/or members of the consortium are banking with them, and that they are in **good financial standing**. The government Agency/LGU concerned shall determine on a project-to-project basis, and before pre-qualification, the minimum amount of equity needed. In addition, the Agency/LGU will inform the proponents of the minimum debt-equity ratio required by the monetary authority for projects to be financed by foreign loans.

x x x x x x x x x

(Emphasis supplied.)

We have held that the Implementing Rules provide for the unyielding standards the PBAC should apply to determine the financial capability of a bidder for pre-qualification purposes: (i) proof of the ability of the project proponent and/or the consortium to provide a minimum amount of equity to the project and (ii) a letter testimonial from reputable banks attesting that the project proponent and/or members of the consortium are banking with them, that they are in good financial standing, and that they have adequate resources. The evident intent of these standards is to protect the integrity and insure the viability of the project by seeing to it that the proponent has the financial capability to carry it out.[25] Unfortunately, none of these requirements was submitted by API during the pre-qualification stage.

Petitioner assails the Sandiganbayan for allegedly failing to appreciate the legal intent of the BOT Law which allows contracts on a negotiated basis for unsolicited proposals like the Wag-Wag Shopping Mall project. It asserts that the procedure and requirements for bidding have been complied with when the Municipality of Muñoz caused the publication of the invitation to submit comparative bids for the BOT project was published in *Pinoy*, a newspaper of general circulation for three consecutive weeks. Since no comparative bid/proposal was received within sixty (60) days, the BOT project was rightfully awarded to API, the original proponent.

The contention fails.

Unsolicited proposals refer to project proposals submitted by the private sector to undertake infrastructure or development projects which may be entered into by a government agency or local government unit.[26] Section 4-a of R.A. No. 6957 as amended by R.A. No. 7718 governs unsolicited proposals:

SEC. 4-A. *Unsolicited Proposals.* — Unsolicited proposals for projects may be accepted by any government agency or local

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[25] *Agan, Jr. v. Philippine International Air Terminals Co. Inc.*, G.R. Nos. 155001, 155547 & 155661, January 21, 2004, 420 SCRA 575, 588-589.

[26] Sec. 1.3 (v), IRR of R.A. No. 6957 as amended by R.A. No. 7718.

government unit on a negotiated basis: *Provided*, That, all the following conditions are met: (1) such projects involved a new concept or technology and/or are not part of the list of priority projects, (2) no direct government guarantee, subsidy or equity is required, and (3) the government agency or local government unit has invited by publication, for three (3) consecutive weeks, in a newspaper of general circulation, comparative or competitive proposals, and no other proposal is received for a period of **sixty (60) working days**: *Provided, further*, That in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within thirty (30) working days.

We note that it was the SB which invited the API to provide information on the construction of a shopping mall project under the BOT scheme. It cannot be said thus that the development project originated from the proponent/contractor. Nonetheless, even if the proposal is deemed unsolicited, still the requirements of the law have not been complied with.

The IRR specified the requirement of publication of the invitation for submission of proposals, as follows:

SEC. 10.11. *Invitation for Comparative Proposals.* — The Agency/LGU shall publish the invitation for comparative or competitive proposals **only after ICC/Local Sanggunian issues a no objection clearance of the draft contract**. The invitation for comparative or competitive proposals should be published at least once every week for three (3) weeks in at least one (1) newspaper of general circulation. It shall **indicate the time, which should not be earlier than the last date of publication, and place where tender/bidding documents could be obtained.** It shall likewise explicitly specify a time of **sixty (60) working days reckoned from the date of issuance of the tender/bidding documents** upon which proposals shall be received. Beyond said deadline, no proposals shall be accepted. A pre-bid conference shall be conducted ten (10) working days after the issuance of the tender/bidding documents. (Emphasis supplied.)

The above provision highlighted other violations in the bidding procedure for the subject BOT project. *First*, there was no prior approval by the Investment Coordinating Committee of the National Economic Development Authority (ICC-NEDA) of the

Wag-Wag Shopping Mall project. Under the BOT Law, local projects to be implemented by the local government units concerned costing above ₱200 million shall be submitted for confirmation to the ICC-NEDA.[27] Such requisite approval shall be applied for and should be secured by the head of the LGU prior to the call for bids for the project.[28] *Second*, the law requires publication in a newspaper of general circulation. To be a newspaper of general circulation, it is enough that it is published for the dissemination of local news and general information, that it has a *bona fide* subscription list of paying subscribers, and that it is published at regular intervals. Over and above all these, the newspaper must be available to the public in general, and not just to a select few chosen by the publisher.[29] Petitioner did not submit in evidence the affidavit of the publisher attesting to *Pinoy* tabloid as such newspaper of general circulation. And *third*, even assuming that *Pinoy* was indeed a newspaper of general circulation, the invitation published indicated a shorter period of submission of comparative proposals, only thirty (30) days instead of the prescribed sixty (60) days counted from the date of issuance of tender documents.

There is likewise no showing that API complied with the submission of a complete proposal required under the IRR:

SEC. 10.5 *Submission of a Complete Proposal.* — For a proposal to be considered by the Agency/LGU, the proponent has to submit a complete proposal which shall include a feasibility study, **company**

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[27] Sec. 4 of R.A. No. 6957 as amended by R.A. No. 7718 provides:

SEC. 4. *Priority Projects.* — x x x

The list of local projects to be implemented by the local government units concerned shall be submitted for confirmation to the municipal development council for projects costing up to Twenty million pesos; those costing above Twenty up to Fifty million pesos to the provincial development council; those costing up to Fifty Million pesos to the city development council; above Fifty million up to Two hundred million pesos to the regional development councils; and those above Two hundred million pesos to the ICC of the NEDA.

[28] Sec. 2.3, second par., IRR.

[29] *Metropolitan Bank and Trust Company, Inc. v. Peñafiel*, G.R. No. 173976, February 27, 2009, 580 SCRA 352, 360-361, citing *Perez v. Perez*, G.R. No. 143768, March 28, 2005, 454 SCRA 72, 81.

profile as outlined in Annex A, and the basic contractual terms and conditions on the obligations of the proponent and the government. The Agency/LGU shall acknowledge receipt of the proposal and advice the proponent whether the proposal is complete or incomplete. If incomplete, it shall indicate what information is lacking or necessary. (Emphasis supplied.)

As correctly pointed out by the Sandiganbayan, API's proposal showed that it lacked the above requirements as it did not include a company profile and the basic contractual terms and conditions on the obligations of the proponent/contractor and the government. Had such company profile been required of API, the municipal government could have been apprised of the fact that said contractor/proponent had been in existence for only three months at that time and had not yet completed a project, although APRI, which actually undertook the Calamba and Lemery shopping centers also under BOT scheme, is allegedly the same entity as API which have the same set of incorporators and directors. But more important, the municipality could have realized earlier, on the basis of financial statements and experience in construction included in the company profile, that API could not possibly comply with the huge financial outlay for the Wag-Wag Shopping Mall project. It could have also noted the fact that the aforesaid BOT shopping centers in Lemery and Calamba being implemented by APRI at that time were not yet finished or completed. In any event, such existing BOT contract of APRI with another LGU neither justified non-compliance by API with the submission of a complete proposal for the Wag-Wag Shopping Mall project for a competent evaluation by the PBAC.

Indeed, contrary to petitioner's stance, the process of unsolicited proposals does involve public bidding where, in the end, the government is free to choose the bid or proposal most advantageous to it.[30] Thus we held in *Asia's Emerging Dragon Corporation v. DOTC*[31]:

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[30] *Asia's Emerging Dragon Corporation v. Department of Transportation and Communications*, G.R. Nos. 169914 & 174166, April 7, 2009, 584 SCRA 355, 376.

[31] *Id.* at 373, 375. Resolution denying with finality the motions for reconsideration of the Decision dated April 18, 2008.

The protestation by AEDC of our characterization of the process on unsolicited proposal as public bidding is specious.

We call attention to the following relevant sections of Rule 10 of the IRR specifically on Unsolicited Proposals:

> Sec. 10.9. *Negotiation With the Original Proponent*. — Immediately after ICC/Local *Sanggunian*'s clearance of the project, the Agency/LGU shall proceed with the in-depth negotiation of the project scope, implementation arrangements and concession agreement, **all of which will be used in the Terms of Reference for the solicitation of comparative proposals.** The Agency/LGU and the proponent are given ninety (90) days upon receipt of ICC's approval of the project to conclude negotiations. The Agency/LGU and the original proponent shall negotiate in good faith. However, should there be unresolvable differences during the negotiations, the Agency/LGU shall have the option to reject the proposal and bid out the project. On the other hand, if the negotiation is successfully concluded, **the original proponent shall then be required to reformat and resubmit its proposal in accordance with the requirements of the Terms of Reference to facilitate comparison with the comparative proposals.** The Agency/LGU shall validate the reformatted proposal if it meets the requirements of the TOR prior to the issuance of the invitation for comparative proposals.
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> Sec. 10.10. *Tender Documents*. — **The qualification and tender documents shall be prepared along the lines specified under Rules 4 and 5 hereof.** The concession agreement that will be part of the tender documents will be considered final and non-negotiable by the challengers. Proprietary information shall, however, be respected, protected and treated with utmost confidentiality. As such, it shall not form part of the bidding/tender and related documents.
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After the concerned government agency or local government unit (LGU) has received, evaluated, and approved the pursuance of the project subject of the unsolicited proposal, the subsequent steps are fundamentally similar to the bidding process conducted for ordinary government projects.

The three principles of public bidding are: the offer to the public, an opportunity for competition, and a basis for an exact comparison of bids, **all of which are present in Sec. 10.9 to Sec. 10.16 of the IRR**. *First*, the project is offered to the public through the publication of the invitation for comparative proposals. *Second*, the challengers are given the opportunity to compete for the project through the submission of their tender/bid documents. *And third*, the exact comparison of the bids is ensured by using the same requirements/ qualifications/criteria for the original proponent and the challengers, to wit: **the proposals of the original proponent and the challengers must all be in accordance with the requirements of the Terms of Reference (TOR) for the project**; the original proponent and the challengers are required to post bid bonds equal in amount and form; and the qualifications of the original proponent and the challengers shall be evaluated by the concerned agency/LGU using the same evaluation criteria. (Additional emphasis supplied.)

In this case, the only attempt made to comply with the bidding requirements is the publication of the invitation which, as already mentioned, was even defective. As noted by the Sandiganbayan, there was no in-depth negotiation as to the project scope, implementation and arrangements and concession agreement, which are supposed to be used in the Terms of Reference (TOR). Such TOR would have provided the interested competitors the basis for their proposed cost, and its absence in this case is an indication that any possible competing proposal was intentionally avoided or altogether eliminated. The essence of competition in public bidding is that the bidders are placed on equal footing.[32] In the award of government contracts, the law requires a competitive public bidding. This is reasonable because "[a] competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. It is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts."[33]

Despite API's obvious lack of financial qualification and absence of basic terms and conditions in the submitted proposal,

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[32] See *JG Summit Holdings, Inc. v. Court of Appeals*, G.R No. 124293, September 24, 2003, 412 SCRA 10, 33.

[33] *Garcia v. Burgos*, G.R. No. 124130, June 29, 1998, 291 SCRA 546, 576.

petitioner who chaired the PBAC, recommended the approval of API's proposal just forty-five (45) days after the last publication of the invitation for comparative proposals, and subsequently requested the SB to pass a resolution authorizing him to enter into a MOA with API as the lone bidder for the project. It was only in the MOA that the details of the construction, terms and conditions of the parties' obligations, were laid down at the time API was already awarded the project. Even the MOA provisions remain vague as to the parameters of the project, which the Sandiganbayan found as placing API "at an arbitrary position where it can do as it pleases without being accountable to the municipality in any way whatsoever." True enough, when API failed to execute the construction works and abandoned the project, the municipality found itself at extreme disadvantage without recourse to a performance security that API likewise failed to submit.

Petitioner as the local chief executive failed to ensure that API which was awarded the BOT contract, will submit such other requirements specified under the IRR:

> Sec. 11.7. *Conditions for Approval of Contract.* — The Head of Agency/LGU shall ensure that all of the following conditions have been complied with before approving the contract:
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> a. Submission of the required **performance security** as prescribed under Section 12.7 hereof;
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> b. **Proof of sufficient equity** from the investors and firm commitments from reputable financial institution to provide sufficient credit lines to cover the total estimated cost of the project;
>
> c. **ICC clearance** of the contract on a no-objection basis;
>
> Failure by the winning project proponent to submit the requirements prescribed under items a, b and c above within the time period specified by the concerned Agency/LGU in the Notice of Award or failure to execute the contract within the specified time **shall result in the disqualification of the bidder, as well as the forfeiture of the bid security of the bidder.**
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Sec. 12.7. *Performance Guarantee for Construction Works.* — **To guarantee the faithful performance by the project proponent of its obligations under the contract including the prosecution of the construction works related to the project**, the project proponent shall post in favor of the Agency/LGU concerned, within the time and under the terms prescribed under the project contract, a **performance security** in the form of cash, manager's check, cashier's check, bank draft or guarantee confirmed by a local bank (in the case of foreign bidders bonded by a foreign bank), letter of credit issued by a reputable bank, surety bond callable on demand issued by the Government Service Insurance System (GSIS) or by surety or insurance companies duly accredited by the Office of the Insurance Commissioner, or a combination thereof, in accordance with the following schedules:

a. *Cash, manager's check, cashier's check, irrevocable letter of credit, bank draft* — a minimum of two percent (2%) of the total Project Cost.

b. *Bank Guarantee* — a minimum of five percent (5%) of the total Project Cost.

c. *Surety Bond* — a minimum of ten percent (10%) of the total Project Cost. (Emphasis supplied.)

In the Notice of Award dated September 16, 1996, petitioner directed API to submit the above requirements. However, API's counsel, Atty. Lydia Y. Marciano, wrote in reply that such requirements do not apply because API's project does not involve any government undertaking. API at that point should have been disqualified and its bid security forfeited, pursuant to Section 11.7 of the IRR. Yet, API was allowed to proceed with the execution of the project albeit only the site clearing, excavation and construction of a sales office were accomplished.

Under the facts established, it is clear that petitioner gave unwarranted benefits, advantage or preference to API considering that said proponent/contractor was not financially and technically qualified for the BOT project awarded to it, and *without complying with the requirements of bidding and contract approval for BOT projects* under existing laws, rules and regulations.

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another.[34] As to "partiality," "bad faith," and "gross inexcusable negligence," we have explained the meaning of these terms, as follows:

> "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."[35]

We sustain and affirm the Sandiganbayan in holding that petitioner violated Section 3(e) of R.A. No. 3019, and that he cannot shield himself from criminal liability simply because the SB passed the necessary resolutions adopting the BOT project and authorizing him to enter into the MOA. We find no error or grave abuse in its ruling, which we herein quote:

> It is apparent that the unwarranted benefit in this case lies in the very fact that API was allowed to present its proposal without compliance of *[sic]* the requirements provided under the relevant laws and rules. To begin with, the municipal government never conducted a public bidding prior to the execution of the contract. The project was immediately awarded to the API without delay and without any rival proponents, when it was not qualified to participate in the first place. The legality and propriety of the agreement executed

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[34] *Sison v. People, supra* note 14 at 681-682.

[35] *Id.* at 680.

with the contractor is totally absent based on the testimonies of both the prosecution and the defense.

This Court also considers these particular acts significant. *First*. From the testimony of then Vice-Mayor Ruiz, Jesus V. Garcia, the president of API, attended the SB session after paying a courtesy call to the Accused who was then the Mayor. *Second*. It was the Accused who signed and posted the Invitation to Bid (Exhibit N) giving proponents 30 days to submit their proposals. *Third*. The Accused is the head of the Pre-Qualification Bids and Awards Committee which according to him recommended the approval of API's proposal. This was the reason he used in requesting authority from the SB to grant him the authority to contract with API. *Fourth*. The Accused requested the SB to give him authority to enter into an agreement with API through a resolution (Exhibit S)[.] *Fifth*. It was the Accused who invited the SB members to go to the Mayor's office to witness the signing of the Memorandum of Agreement between the municipality and API.[36]

As the local chief executive, petitioner is not only expected to know the proper procedure in the bidding and award of infrastructure contracts such as BOT projects, he is also duty bound to follow the same and his failure to discharge this duty constitutes gross and inexcusable negligence.[37]

Petitioner further assails the Sandiganbayan in not considering the previous dismissal of the criminal complaint filed by Alberto Castañeda against petitioner also involving the Wag-Wag Shopping Mall project. The Sandiganbayan pointed out that said case (OMB-1-97-1885) was dismissed by the Office of the Deputy Ombudsman for Luzon on March 26, 1999 at the time the construction works were supposedly only temporarily stopped by API, while in this case it is already apparent that the latter abandoned the project and reneged on its obligation.

We find nothing illegal in the reversal by the Ombudsman upon review of the September 9, 2002 resolution of the Office

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[36] *Rollo*, pp. 81-82.

[37] See *Ong v. People*, G.R. No. 176546, September 25, 2009, 601 SCRA 47, 56.

of the Deputy Ombudsman for Luzon which recommended the dismissal of the complaint-affidavit filed by Domiciano R. Laurena IV upon the ground that a similar criminal complaint filed by Castañeda had been dismissed in OMB-1-97-1885. The Office of the Ombudsman Chief Legal Counsel granted the petition for review filed by complainant Laurena IV and recommended that petitioner be indicted before the Sandiganbayan for violation of Section 3(e) of R.A. No. 3019. It pointed out that the dismissal of OMB-1-97-1885 was premised on the authority of a local legislature to accept unsolicited proposals and enter into a BOT project under R.A. No. 6957 as amended by R.A. No. 7718, and the lack of any showing of undue injury to the Municipality of Muñoz as a result of the temporary work stoppage. However, the issue of lack of API's construction license was never brought out in the earlier case while in the present case, the PCAB attested to the fact that API is not a licensed contractor and petitioner's approval of API's proposal is a clear badge of giving unwarranted benefit, preference or advantage through manifest partiality, evident bad faith, or at the very least, gross inexcusable negligence. The OMB found that petitioner could have easily discovered such fact with basic prudence considering that a ₱240-million infrastructure was involved, but apparently he threw all caution to the wind and relied solely on the self-serving representation of API that it possesses the requisite contractor's license.[38] This ruling of the OMB Chief Legal Counsel was affirmed upon review by the Special Prosecutor and approved by Ombudsman Merceditas N. Gutierrez on August 4, 2006.[39]

It may be recalled that on motion of petitioner, the Ombudsman even conducted a reinvestigation of the case pursuant to the January 15, 2007 directive of the Sandiganbayan. In a memorandum[40] dated March 5, 2007, then Special Prosecutor Dennis M. Villa-Ignacio approved the finding of probable cause against the petitioner and the recommendation that the information

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[38] Records (Vol. 1), pp. 4-7.

[39] *Id.* at 8-15.

[40] *Id.* at 339-347.

already filed in this case, for which petitioner had already been arraigned, be maintained. Petitioner cannot claim denial of his right to due process, as he had been given ample opportunity to present evidence on his defense in the proceedings before the Ombudsman and Sandiganbayan.

No grave abuse of discretion was committed by the Ombudsman in reversing the previous dismissal of a similar criminal complaint against the petitioner involving the anomalous award of the BOT contract to API. Indeed, the Ombudsman is not precluded from ordering another review of a complaint, for he or she may revoke, repeal or abrogate the acts or previous rulings of a predecessor in office. Thus we held in *Trinidad v. Office of the Ombudsman*[41]:

> Petitioner's arguments — that *res judicata* applies since the Office of the Ombudsman twice found no sufficient basis to indict him in similar cases earlier filed against him, and that the *Agan* cases cannot be a supervening event or evidence *per se* to warrant a reinvestigation on the same set of facts and circumstances — do not lie.
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> *Res judicata* is a doctrine of civil law and thus has no bearing on criminal proceedings.
>
> But even if petitioner's argument were to be expanded to contemplate "*res judicata* in prison grey" or the criminal law concept of double jeopardy, this Court still finds it inapplicable to bar the reinvestigation conducted by the Office of the Ombudsman. For **the dismissal of a case during preliminary investigation does not constitute double jeopardy, preliminary investigation not being part of the trial.**
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> Insisting that the case should be barred by the prior Joint Resolution of the Ombudsman, petitioner posits that repeated investigations are oppressive since he as respondent and other respondents would be made to suffer interminable prosecution since resolutions dismissing complaints would perpetually be subject to reopening at any time and by any party. Petitioner particularly points out that no new evidence was presented at the reinvestigation.
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> Petitioner's position fails to impress.

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[41] G.R. No. 166038, December 4, 2007, 539 SCRA 415, 423-425.

The Ombudsman is not precluded from ordering another review of a complaint, for he or she may revoke, repeal or abrogate the acts or previous rulings of a predecessor in office. And *Roxas v. Hon. Vasquez* teaches that **new matters or evidence are not prerequisites for a reinvestigation, which is simply a chance for the prosecutor, or in this case the Office of the Ombudsman, to review and re-evaluate its findings and the evidence already submitted**. (Emphasis supplied.)

As to the propriety of damages awarded by the Sandiganbayan, we find that the same is proper and justified. The term "undue injury" in the context of Section 3(e) of the Anti-Graft and Corrupt Practices Act punishing the act of "causing undue injury to any party," has a meaning akin to that civil law concept of "actual damage." Actual damage, in the context of these definitions, is akin to that in civil law.[42]

Article 2199 of the Civil Code provides that *except as provided by law or by stipulation*, one is entitled to an adequate compensation only for such pecuniary loss suffered by a party as he has duly proved. Liquidated damages, on the other hand, are those agreed upon by the parties to a contract, to be paid in case of a breach thereof.[43]

For approved BOT contracts, it is mandatory that a performance security be posted by the contractor/proponent in favor of the LGU in the form of cash, manager's check, cashier's check, irrevocable letter of credit or bank draft in the minimum amount of 2% of the total project cost.[44] In case the default occurred during the project construction stage, the LGU shall likewise forfeit the performance security of the erring project proponent/contractor.[45] The IRR thus provides:

SEC. 12.13. *Liquidated Damages.* — Where the project proponent of a project fails to satisfactorily complete the work within the

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[42] *Santos v. People, supra* note 13 at 197, citing *Llorente, Jr. v. Sandiganbayan,* 350 Phil. 820, 838 (1998).

[43] Art. 2226, Civil Code.

[44] Sec. 12.7 (a), IRR.

[45] Sec. 12.19 (b), IRR.

construction period prescribed in the contract, including any extension or grace period duly granted, and is thereby in default under the contract, the project proponent shall pay the Agency/LGU concerned liquidated damages, as may be agreed upon under the contract by the parties. The parties shall agree on the amount and schedule of payment of the liquidated damages. The performance security may be forfeited to answer for any liquidated damages due to the Agency/LGU. The amount of liquidated damages due for every calendar day of delay will be determined by the Agency/LGU. In no case however shall the delay exceed twenty percent (20%) of the approved construction time stipulated in the contract plus any time extension duly granted. In such an event the Agency/LGU concerned shall rescind the contract, forfeit the proponent's performance security and proceed with the procedures prescribed under Section 12.19. b.

Had the requirement of performance security been complied with, there is no dispute that the Municipality of Muñoz would have been entitled to the forfeiture of performance security when API defaulted on its obligation to execute the construction contract, at the very least in an amount equivalent to 2% of the total project cost. Hence, said LGU is entitled to such damages which the law mandates to be incorporated in the BOT contract, the parties being at liberty only to stipulate the extent and amount thereof. To rule otherwise would mean a condonation of blatant disregard and violation of the provisions of the BOT law and its implementing rules and regulations which are designed to protect the public interest in transactions between government and private business entities. While petitioner claims to have entered into a compromise agreement as authorized by the SB and approved by the trial court, no evidence of such judicial compromise was submitted before the Sandiganbayan.

WHEREFORE, the petition is *DENIED*. The Decision dated November 16, 2009 and Resolution dated June 9, 2010 of the Sandiganbayan in Criminal Case No. SB-06-CRM-0389 are *AFFIRMED.*

With costs against the petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, and *del Castillo, JJ.,* concur.

Bersamin, J., see dissenting opinion.

DISSENTING OPINION

BERSAMIN, *J.*:

The Majority have voted to deny the motion for reconsideration of the Decision promulgated on June 29, 2011 filed by the petitioner. However, I respectfully dissent and strongly urge that we review and reverse the Decision of June 29, 2011. My re-examination of the records convinces me to conclude and hold that the acts and actuations of the petitioner did not amount to a violation of the letter and spirit of Section 3(*e*) of Republic Act No. 3019.

Accordingly, I vote to acquit the petitioner for failure of the State to establish his guilt beyond reasonable doubt.

Antecedents

The petitioner was the Mayor of the then Municipality of Muñoz (now Science City of Muñoz) when the transaction subject of this case transpired in September 1996.

On July 7, 1995, the *Sangguniang Bayan* of Muñoz (SB) adopted Resolution No. 136, S-95[1] to invite Jess Garcia, President of the Australian Professional, Inc. (API), to participate in the planned construction of a fourstorey shopping mall (Wag-Wag Shopping Mall).

On February 9, 1996, the tabloid *Pinoy* published the invitation[2] for proposals for the Wag-Wag Shopping Mall project, giving interested bidders 30 days within which to submit their offers. On April 12, 1996, the Prequalification, Bids and Awards

[1] *Rollo,* pp. 153-154.

[2] *Id.* at 152.

Committee (PBAC) recommended[3] the approval of the proposal submitted by API, the lone interested bidder. On April 15, 1996, the SB passed a resolution authorizing the petitioner to enter into a Memorandum of Agreement (MOA) with API regarding the Wag-Wag Shopping Mall project.[4] Then, on September 12, 1996, Alvarez (representing the Municipality) and API entered into and executed the MOA.[5]

On February 14, 1997, the groundbreaking ceremony was held on site, where the old Motor Pool, the old Health Center, and a semi-concrete one-storey building (then housing the Department of Agriculture, the BIR, the Office of the Assessor, the old Post Office, the Commission on Elections, and the Department of Social Welfare and Development) were all situated. API later started the excavation, and a billboard informing the public about the project and its contractor was placed on the site.

On August 10, 2006, the petitioner was indicted in the Sandiganbayan for violation of Section 3(*e*) of Republic Act No. 3019 under the information that alleged:

> That on or about 12 September 1996, and sometime prior or subsequent thereto, in the then Municipality (now Science City) of Muñoz, Nueva Ecija, and within the jurisdiction of this Honorable Court, the above-named accused EFREN L. ALVAREZ, a high ranking public official, being then the Mayor of Muñoz, Nueva Ecija, taking advantage of his official position and while in the discharge of his official or administrative functions, and committing the offense in relation to his office, acting with evident bad faith or gross inexcusable negligence or manifest partiality did then and there willfully, unlawfully and criminally give the Australian-Professional Incorporated (API) unwarranted benefits, advantage or preference, by awarding to the latter the contract for the construction of Wag-Wag Shopping Mall in the amount of Two Hundred Forty Million Pesos (Php 240,000,000.00) under a Buil[d]-Operate-Transfer

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[3] *Id*. at 64.

[4] *Id*. at 196.

[5] *Id*. at 147-151.

Agreement, notwithstanding the fact that API was and is not a duly-licensed construction company as per records of the Philippine Construction Accreditation Board (PCAB), which construction license is a pre-requisite for API to engage in construction of works for the said municipal government and that API does not have the experience and financial qualifications to undertake such costly project among others, to the damage and prejudice of the public service.

CONTRARY TO LAW.[6]

On September 22, 2006, the petitioner pleaded *not guilty*. Trial then ensued. The State presented several witnesses to prove that Alvarez approved the MOA with API, knowing that API had no capacity to undertake such a big project. Aaron C. Tablazon of the Philippine Construction Accreditation Board (PCAB) testified that PCAB issued the two certifications to the effect that API had not been issued a Contractor's License.[7] Ma. Chona A. Caacbay of the Securities and Exchange Commission (SEC) stated that API's application for registration was approved on July 28, 1995; and that its capital stock was ₱40,000,000.00 and its paid-up capital ₱2,500,000.00.[8] Romeo A. Ruiz, the Vice Mayor of Muñoz in 1992-1998, recalled that the petitioner had requested the SB to pass a resolution granting him authority to enter into the MOA with API on the construction of Wag-Wag Shopping Mall under the Build-Operate-Transfer (BOT) scheme; and that the petitioner made such request because the PBAC, headed by the petitioner, had recommended the acceptance of the proposal of API.

On the other hand, the Defense countered that the petitioner had substantially complied with the provisions of the BOT law. He testified that when he was its Mayor, the Municipality of Muñoz borrowed money from the Government Service Insurance System (GSIS) to finance the proposed four-storey Wag-Wag Shopping Mall project; that then Vice Mayor Ruiz and the other members of the SB showed him the *Manila Bulletin* and *Business*

[6] *Id*. at 53-54.

[7] *Id*. at 54-55.

[8] *Id*. at 55.

Bulletin publications of the BOT projects of the Australian Professional Realty Incorporated (APRI);[9] that on September 16, 1996, the Municipality issued a notice of award to API; that prior to the start of the project he required API to submit the necessary documents and to post notices; that API did not submit the necessary documents, claiming that the BOT law did not require such documents; that the project was not completed because of the 1997 financial crisis; that then Vice Mayor Ruiz sent a letter to API complaining about the slow pace of the project; and that the letter remained unheeded at that time because the president of API was then vacationing in Europe.[10]

The petitioner emphasized that the Municipality suffered no actual damage because the local treasury did not spend a single centavo for the project; that the project was an *unsolicited proposal* under the BOT law; that API paid a disturbance fee of ₱500,000.00; that the SB passed a resolution authorizing him to file cases against API with the objective of mutually terminating the agreement; that he, as the representative of the Municipality, and Atty. Lydia Y. Marciano, as the representative of API, mutually terminated the agreement; and that he could not present a copy of the compromise agreement because fire had meanwhile razed the premises of the Regional Trial Court in Balok, Sto. Domingo, Nueva Ecija, where the compromise settlement had been filed.[11]

The petitioner declared that an annual net income of ₱5,000,000.00 had been forecast out of the loan of ₱40,000,000.00 from the GSIS; that he had conducted a study relative to the capability of API, but APRI had not yet completed any project as of that time; that API and APRI were one and the same, although he admittedly did not inquire from the SEC about the status of the two companies; and that he did not determine whether API was a licensed contractor.[12]

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[9] *Id.* at 58.

[10] *Id.* at 59.

[11] *Id.*

[12] *Id.* at 60.

On November 16, 2009, the Sandiganbayan rendered its decision, convicting the petitioner based on the following findings: (*a*) the project had no prior confirmation or approval by the Investment Coordination Council of NEDA; (*b*) a shorter period was given for comparative or competitive proposals; (*c*) there was failure to meet the conditions for the approval of the contract, including the posting of a performance security; (*d*) there was no in-depth negotiations with proponent; (*e*) API did not submit a complete proposal; (*f*) no clear plan was presented; (*g*) API was not a licensed contractor according to the PCAB; and (*h*) the petitioner was totally remiss in his duties under the *Local Government Code of 1991*. The Sandiganbayan further found that the Government suffered actual damages due to the acts of the petitioner, resulting from the loss of several public buildings as well as the resources from the demolition of such structures, which was quantified at ₱4,800,000.00, or 2% of the total project cost of ₱240,000,000.00.[13] The dispositive portion reads:

> ACCORDINGLY, accused Efren L. Alvarez is found guilty beyond reasonable doubt for [sic] violation of Section 3 (e) of Republic Act No. 3019 and is sentenced to suffer in prison the penalty of 6 years and 1 month to 10 years. He also has to suffer perpetual disqualification from holding any public office and to indemnify the City Government of Muñoz (now Science), Nueva Ecija the amount of Four Million Eight Hundred Thousand Pesos (Php4,800,000.00) less the Five Hundred Thousand Pesos (Php500,000.00) API earlier paid the municipality as damages.
>
> Costs against the accused.
>
> SO ORDERED.[14]

On June 9, 2010, the Sandiganbayan denied the petitioner's motion for reconsideration for its lack of merit.[15]

Ruling of the Court

Thus, the petitioner appealed, raising the following issues:

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[13] *Id*. at 80-81.

[14] *Id*. at 84.

[15] *Id*. at 111.

1. Whether or not the Sandiganbayan failed to observe the requirement of proof beyond reasonable doubt in convicting him;
2. Whether or not the Sandiganbayan failed to appreciate the legal intent of the BOT project;
3. Whether or not the Sandiganbayan utterly failed to appreciate that the BOT was a lawful project of the SB and not his project; and
4. Whether or not the Sandiganbayan utterly failed to appreciate that there was no damage as contemplated by law caused to the Municipality of Muñoz to warrant his conviction.[16]

On June 29, 2011, the Court affirmed the conviction of the petitioner. It rejected his argument that he could not be held liable for violating Section 3(*e*) of Republic Act No. 3019 because there had been no disbursement of public funds involved. The Court explained that there were two modes of violating Section 3(*e*) of Republic Act No. 3019, namely: (*a*) "causing any undue injury to any party, including the Government"; and (*b*) "giving any private party any unwarranted benefits, advantage or preference." The Court discoursed that under the second mode, it was sufficient that the accused gave unjustified favor or benefit to another, in the exercise of his official, administrative, or judicial functions; and held that the State successfully demonstrated that the petitioner acted with manifest partiality and gross inexcusable negligence in awarding the BOT contract to an unlicensed and financially unqualified private entity.

Hence, the petitioner filed a motion for reconsideration, contending:

I

THE HONORABLE COURT FAILED TO CONSIDER THAT THE SANDIGANBAYAN COMMITTED MANIFEST ERROR, VIOLATED PETITIONER'S CONSTITUTIONAL RIGHT TO THE PRESUMPTION OF INNOCENCE, AND BLATANTLY DISREGARDED THE PRINCIPLE OF REGULARITY IN THE PERFORMANCE OF

[16] *Id*. at 20.

OFFICIAL FUNCTIONS WHEN IT CONVICTED MAYOR ALVAREZ OF VIOLATING R.A. 3019 ON THE BASIS OF HIS FAILURE TO COMPLY WITH THE REQUIREMENTS OF R.A. 7718 ON "SOLICITED PROPOSALS" WHEN IT WAS CLEAR THAT THE CONSTRUCTION OF THE WAG WAG SHOPPING MALL WAS AN UNSOLICITED AND UNCHALLENGED PROPOSAL.

II

THE HONORABLE COURT FAILED TO CONSIDER THE SERIOUS AND MANIFEST ERROR COMMITTED BY THE SANDIGANBAYAN WHEN THE LATTER DISREGARDED MAYOR ALVAREZ'S SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS OF R.A. 7718.

III

THE HONORABLE COURT FAILED TO CONSIDER THAT THE SANDIGANBAYAN DISREGARDED THE RIGHT OF MAYOR ALVAREZ TO THE EQUAL PROTECTION OF THE LAWS WHEN HE ALONE AMONG THE NUMEROUS PERSONS WHO APPROVED AND IMPLEMENTED THE UNSOLICITED PROPOSAL WAS CHARGED, TRIED AND CONVICTED.

IV

THE HONORABLE COURT FAILED TO CONSIDER THAT THE SANDIGANBAYAN CONVICTED PETITIONER DESPITE THE CLEAR FACT THAT THE PROSECUTION FAILED TO ESTABLISH HIS GUILT BEYOND REASONABLE DOUBT, AS SHOWN BY THE FOLLOWING CIRCUMSTANCES:

(A) THE PROSECUTION FAILED TO ESTABLISH ALLEGED GROSS INEXCUSABLE NEGLIGENCE, EVIDENT BAD FAITH OR MANIFEST PARTIALITY OF PETITIONER

(B) THE PROSECUTION FAILED TO ESTABLISH THE ALLEGED DAMAGE OR INJURY PURPORTEDLY SUFFERED BY THE GOVERNMENT.

V

THE HONORABLE COURT FAILED TO CONSIDER THE ESTABLISHED FACTS SHOWING THAT PETITIONER:

(A) NEVER ACTED WITH "GROSS INEXCUSABLE NEGLIGENCE" AND/OR "MANIFEST PARTIALITY."

(B) NEVER GAVE ANY "UNWARRANTED BENEFIT," "ADVANTAGE" OR "PREFERENCE" TO API.

VI

THE HONORABLE COURT FAILED TO CONSIDER THAT PETITIONER IS AN OUTSTANDING LOCAL EXECUTIVE WITH UNIMPEACHABLE CHARACTER AND UNQUESTIONED ACCOMPLISHMENT. PETITIONER IS NOT THE KIND OF INDIVIDUAL WHO WOULD ENTER INTO CONTRACT THAT WOULD PREJUDICE THE GOVERNMENT AND HIS CONSTITUENTS.

Submissions

I find and consider the motion for reconsideration to be meritorious.

I.

Preliminary Considerations

In *Sistoza v. Sandiganbayan*,[17] Sistoza stood charged with a violation of Section 3(*e*) of Republic Act No. 3019, the same offense for which the petitioner herein was indicted and convicted. At the very first sight of lack of probable cause, the Court did not hesitate to spare Sistoza from being subjected to a trial, and in the process uttered the following wise words to caution against insensitive prosecution of supposed official wrongdoings in routine government procurement, stating:

> There is no question on the need to ferret out and expel public officers whose acts make bureaucracy synonymous with graft in the public eye, and to eliminate systems of government acquisition procedures which covertly ease corrupt practices. But the remedy is not to indict and jail every person who happens to have signed a piece of document or had a hand in implementing routine government procurement, nor does the solution fester in the indiscriminate use of the conspiracy theory which may sweep into jail even the most innocent ones. To say the least, this response is excessive and would simply engender catastrophic consequences since prosecution will likely not end with just one civil servant but must, logically, include

[17] G.R. No. 144784, September 3, 2002, 388 SCRA 307, 315-316.

like an unsteady streak of dominoes the department secretary, bureau chief, commission chairman, agency head, and all chief auditors who, if the flawed reasoning were followed, are equally culpable for every crime arising from disbursements they sanction.

Stretching the argument further, if a public officer were to personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority, if only to avoid prosecution, our bureaucracy would end up with public managers doing nothing else but superintending minute details in the acts of their subordinates. It is worth noting that while no charges of violation of Sec. 3, par. (e), of *RA 3019* otherwise known as the *Anti-Graft and Corrupt Practices Act*, as amended, were filed against the responsible officials of the Department of Justice and officers of other government agencies who similarly approved the procurement subject of the instant petition and authorized the disbursement of funds to pay for it, all the blame unfortunately fell upon petitioner Pedro G. Sistoza as then Director of the Bureau of Corrections who merely acted pursuant to representations made by three (3) office divisions thereof, in the same manner that the other officials who were not charged but who nonetheless authorized the transaction in their respective capacities, relied upon the assurance of regularity made by their individual subordinates.

In truth, it is sheer speculation to perceive and ascribe corrupt intent and conspiracy of wrongdoing for violation of Sec. 3, par. (e), of the *Anti-Graft and Corrupt Practices Act*, as amended, solely from a mere signature on a purchase order, although coupled with repeated endorsements of its approval to the proper authority, without more, where supporting documents along with transactions reflected therein passed the unanimous approval of equally accountable public officers and appeared regular and customary on their face.

These words uttered by the *Sistoza* Court have served as my illuminating guidepost in taking a hard look at our Decision of June 29, 2011 affirming the petitioner's conviction.

In our Decision, we observed that "(a)s to the allegation of conspiracy, the Sandiganbayan held that such was adequately shown by the evidence, *noting that this is one case where the Ombudsman should have included the entire Municipal Council*

in the information for the latter had conspired if not abetted all the actions of the petitioner in his dealings with API to the damage and prejudice of the municipality."

We should disown such observation because we would thereby be passing an unwarranted judgment of guilt against persons who were never heard, thereby circumventing their constitutional guarantee of due process that all democratic systems, including ours, have held dear and in the highest esteem. Still, the observation only firmed up the logical conclusion that, at the very least, the petitioner should not alone be faulted for the supposedly illegal acts.

I want to make it clear that I do not subscribe to the petitioner's proposition that "the non-inclusion of the members of the SB in the information constituted a grave violation of his constitutional right to equal protection." The proposition neither shielded him from criminal prosecution nor rendered him innocent. But it is my humble opinion that his individual participation in the awarding of the assailed contract to API did not call for his criminal conviction, considering that the acts the State established to have been proof of his involvement were only his signing of the Invitation for BOT Project; his causing of the publication of the invitation; his signing of the PBAC Resolution recommending the award of the contract to API; his signing of the MOA covering the project; and his entering into the compromise with API after he instituted a civil action against it. Even assuming that all his acts constituted significant and integral components of some fiasco, which I cannot concede, the Court should not close its discerning eyes to the fact that the Wag-Wag Shopping Mall project had originated as the brainchild of the SB. Specifically, it had been the SB that had invited API to present a proposal; it had been the SB that had resolved to adopt the BOT scheme in the construction of the Wag-Wag Shopping Mall; it had been the SB that had authorized the petitioner to enter into a MOA with API; it had been the SB that had authorized him to file a case against API; and it had been the SB that had authorized him to enter into a compromise with API.

Contrary to the stance taken by the Sandiganbayan, what the Court should reckon from the totality of the established circumstances was not a criminal conspiracy among the municipal officials, the petitioner included, but, rather, a conscious effort to faithfully observe the checks and balances within the realm of local governance. The affirmance of the conviction of the petitioner would then be an exaggerated chastisement of his having affixed his signature on the MOA, the very kind of prosecution of a public official that the *Sistoza* Court eloquently denounced.

II.
Unsolicited Proposal

In our challenged Decision, we initially positioned API against the tapestry that was Republic Act No. 6957,[18] as amended by Republic Act No. 7718[19] (collectively, BOT Law). The Decision began by highlighting that a BOT project could only be awarded to the bidder who met the standards set by the BOT Law; and then went on to find that the undeniable disqualification of API for being an unlicensed contractor required us to rule that API could not properly be the awardee of the BOT project for the construction of the Wag-Wag Shopping Mall because it was not qualified to participate in the bidding.

Yet, API was not a bidder because there would be no bidding in which it would participate. Rather, API had been invited by the SB to submit its proposal, and API had accepted the invitation and submitted its proposal. On account of this reality, a review of the Decision is in order.

The Municipality of Muñoz viewed the project from its inception under the rules on *unsolicited proposals*. Several circumstances buttress this conclusion, namely: (*a*) the SB's classification of the project as "nonpriority" in Resolution No. 230, S-95[20] because

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[18] *An Act Authorizing the Financing, Construction, Operation and Maintenance of Infrastructure Projects by the Private Sector, and for Other Purposes* (approved on July 9, 1990).

[19] *An Act Amending Certain Sections of Republic Act No. 6957.*

[20] *Rollo*, p. 162.

the Municipality lacked adequate resources to finance the project and because priority projects were ineligible for unsolicited proposals;[21] (*b*) the PBAC's explicit recommendation of the acceptance of the unsolicited proposal and the awarding of the contract to API pursuant to SB Resolution No. 01, S-96;[22] and (*c*), the Invitation for BOT Project,[23] which was an earnest and sincere attempt to give to the interested public a chance to defeat API's unsolicited proposal.

The Court has repeatedly enforced its power to brush aside erroneous legal impressions, however sincerely they might have been made, where the correct understanding of the pertinent laws indubitably painted a different picture of intention on the part of the parties. Consistent with this laudable zeal, we should immediately deem the Wag-Wag Shopping Mall project to be the unsolicited proposal that it really was simply because that was the nomenclature adopted by the SB for the project. Indeed, I cannot yet find any indicators that varied at all from the *unsolicited* nature of the proposal.

We have regarded the SB's invitation to API as a symbol of solicitation. That view may be justified because API did not originate the idea for the project. However, the proposal was still unsolicited. To be all too literal about the meaning of the term "unsolicited" might be misapprehended hereafter as forbidding the Government, in effect, from giving even the slightest hint on its pursuits to any potential investor. That misapprehension would be most unfortunate and unjustified, considering that the avowed intent of the BOT Law of promoting private sector participation in development projects did not prohibit any proponent of a worthwhile BOT project from knocking on the Government's door *uninvited*. That unwarranted interpretation would have the private sector act like a wandering caroler, moving from one house to the next, uncertain whether his caroling would even be listened to; or would have the private sector simply

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[21] Section 10.3, Implementing Rules and Regulations.

[22] *Rollo*, p. 64.

[23] *Id*. at 152.

distance itself from any collaboration with the Government because of the uncertainty of partnering with the Government in pursuing development projects, no matter how worthy, thereby preventing rather than forging the partnerships that the law has desired and envisioned.

In fact, that the Government first communicates with a prospective investor who then submits an unsolicited proposal has not been unprecedented. The Court actually took note of one such situation in *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*,[24] as the following excerpt indicates:

> In August 1989, the DOTC engaged the services of Aeroport de Paris (ADP) to conduct a comprehensive study of the Ninoy Aquino International Airport (NAIA) and determine whether the present airport can cope with the traffic development up to the year 2010. The study consisted of two parts: first, traffic forecasts, capacity of existing facilities, NAIA future requirements, proposed master plans and development plans; and second, presentation of the preliminary design of the passenger terminal building. The ADP submitted a Draft Final Report to the DOTC in December 1989.
>
> **Sometime in 1993, six business leaders consisting of John Gokongwei, Andrew Gotianun, Henry Sy, Sr., Lucio Tan, George Ty and Alfonso Yuchengco met with then President Fidel V. Ramos to explore the possibility of investing in the construction and operation of a new international airport terminal. To signify their commitment to pursue the project, they formed the Asia's Emerging Dragon Corp. (AEDC) which was registered with the Securities and Exchange Commission (SEC) on September 15, 1993.**
>
> **On October 5, 1994, AEDC submitted an unsolicited proposal** to the Government through the DOTC/MIAA for the development of NAIA International Passenger Terminal III (NAIA IPT III) under a build operate-and-transfer arrangement pursuant to RA 6957 as amended by RA 7718 (BOT Law). (Emphases and underscoring supplied.)

Agan, Jr. adverted to the six business leaders approaching President Ramos to "explore the possibility of investing in the

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[24] G.R. No. 155001, May 5, 2003, 402 SCRA 612, 631-632.

construction and operation of a new international airport terminal." Ostensibly, they proposed to build the NAIA International Passenger Terminal III without prior solicitation by the Government. Here, however, it was slightly different, with the SB inviting API. **But the making of that invitation alone did not make API's eventual proposal a solicited one. Both *Agan, Jr.* and this case shared one common circumstance — that preliminary communications transpired *prior to* the submission of the proposal.**

Unsolicited proposals for projects may be accepted by any government agency or local government unit on a negotiated basis, provided that the following conditions are all met, namely: (*a*) such projects involved a new concept or technology and/or are not part of the list of priority projects; (*b*) no direct government guarantee, subsidy or equity is required; (*c*) the government agency or local government unit has invited comparative or competitive proposals by publication for three consecutive weeks in a newspaper of general circulation, and no other proposal is received for a period of 60 working days; and (*d*) in the event another proponent submits a lower price proposal, the original proponent shall have the right to match that price within 30 working days.[25]

I take the view, therefore, that the Government is not legally precluded from consulting a private entity that possesses the requisite expertise, skills and know-how on a particular undertaking, even if the consultation is pursued with the end of ultimately engaging the private entity for the undertaking. My reason for taking the view is that the giving of undue favors that our policies consistently condemn will be thwarted by the law's several protective measures in place to still afford the public an opportunity for fair competition.

The BOT Law provides two ways on how the private sector may take on a project, to wit: (*a*) through public bidding; and

[25] Section 4-a of R.A. No. 6957, as amended by R.A. No. 7718.

(*b*) through unsolicited proposals.[26] In the first way, an identified project is immediately thrown open to the public for competition, while in the second, a proposal is first submitted before the public is given the chance to compete. If the Government chooses to transact indiscriminately with the public through regular bidding, the pertinent rules on unsolicited proposals find no application. Conversely, if at the outset and to the exclusion of the public, negotiations take place between the Government and a specific person, the ordinary bidding procedures are not at play.

Rule 9 of the Implementing Rules and Regulations (IRR) of the BOT Law has the following significant provisions on direct negotiations and unsolicited proposals, to wit:

> Sec. 9.1. *Direct Negotiation.* — Direct negotiation shall be resorted to when there is only one complying bidder left as defined hereunder:
>
> a. If, after advertisement, only one project proponent applies for pre-qualification and it meets the pre-qualification requirements, after which it is required to submit a bid/proposal which is subsequently found by the Agency/LGU to be complying;
>
> b. If, after advertisement, more than one project proponent applied for pre-qualification but only one meets the prequalification requirements, after which it submits a bid proposal that is found by the Agency/LGU to be complying;
>
> c. If, after pre-qualification of more than one project proponent, only one submits a bid which is found by the Agency/LGU to be complying;
>
> d. If, after pre-qualification, more than one project proponent submit bids but only one is found by the Agency/LGU to be complying;
>
> In such events however, any disqualified bidder may appeal the decision of the concerned Agency/LGU to the Head of Agency in case of national projects, or to the Department of Interior

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[26] Section 2.6 of the Implementing Rules and Regulations (IRR) of the BOT Law states:

> Sec. 2.6. *Allowable Modes of Implementation.* — Projects may be implemented through public bidding or direct negotiation. The direct negotiation mode is subject to conditions specified in Rules 9 and 10 hereof.

> and Local Government (DILG) in case of local projects within fifteen (15) working days from receipt of the notice of disqualification. The Agency/LGU concerned shall act on the appeal within fortyfive (45) working days from receipt thereof. The decision of the Agency concerned or the DILG, as the case may be, shall be final and immediately executory.
>
> Sec. 9.2. *Unsolicited Proposals*. — Unsolicited proposals may likewise, subject to the conditions provided under Rule 10, be accepted by an Agency/LGU on a negotiated basis.

Section 9.1, *supra*, actually envisages an ordinary public bidding in which only a lone bidder ends up to be compliant. The offer to the public and the opportunity for competition, two of the three principles in public bidding,[27] precede the negotiation. Under the BOT Law, therefore, the private sector may become a partner of the Government in its infrastructure projects only either by participating in a regular bidding or by presenting an unsolicited proposal, where there is likewise a subsequent bidding.

The mere fact that the SB invited API did not put API's proposal outside the purview of an unsolicited proposal. Any private corporation, on whose expertise, skills and know-how the Government relies, if asked by the Government to conduct a study for a project, should not be later on disqualified from making a proposal for the project. Nor should its proposal after the study be immediately considered as outside the scope of an unsolicited proposal only because the initiative has not originated from it. Should that be the case, the procedure for ordinary bidding will apply, and the corporation will just have to find itself on the same footing as its competitors despite having expended so much time, effort and resources on the study, wondering in uncertainty about whether its substantial expenditures will ultimately blossom into a solid investment. Such innate unfairness is precisely what the lawmakers sought to avoid, as can be gleaned from the Minutes of the Senate deliberations,[28] to wit:

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[27] *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines, Inc.*, G.R. No. 183789, August 24, 2011, 656 SCRA 214, 229.

[28] Record of the Senate, Tuesday, February 1, 1994, p. 477.

Senator Macapagal: In the Medium-Term Philippine Development Plan and the Cagayan de Oro-Iligan Corridor, the anchor project of the Cagayan de Oro-Iligan Corridor is the Lagindingan International Airport. However, it was very sad to note that in the DOTC public investment program, it was not there. x x x

So, the people of Cagayan de Oro-Iligan Corridor were really flabbergasted that a national government agency should completely ignore a particular anchor project. x x x

The people in the area started selling the idea to everybody who might be interested and, of course, one very obvious party that should be interested is Ayala Corporation because it owns the land that was identified in the planning as the ideal place for the airport. x x x

As time went on, Ayala got more and more interested because everybody in the Cagayan de Oro-Iligan Corridor was telling them that that (sic) airport is so crucial in the development of the Cagayan de Oro-Iligan Corridor. So, Ayala Corporation started toying with the idea; it started some preliminary casual talks, and then more serious talks with possible Japanese investors. Then they got into the conclusion that there are some things they cannot undertake even in that consortium of two. They got into that some aspects should really be funded by the Government and that therefore, the project should be divided into two parts, one part should be Government and one part should be BOT. All of this conceptualization to be transformed into project specifications would undertake time and, in fact, millions of investment on the part of, let us say, Ayala corporation.

If, after spending millions for the project specification, it is simply bidded out in a purely competitive tender, then that is thoroughly unfair to Ayala Corporation. If that is the case provided by law, Ayala Corporation will not even go into the feasibility study. Unfortunately, DOTC does not have the money to go into that feasibility study instead. If that happens, we will have the money to go into that feasibility study instead. If that happens, we will have a Cagayande Oro-Iligan Corridor project that will again be a political wish because the anchor project will not be there.

So, Mr. President, it is a situation such as this where we feel that there is certainly merit for the common good in a negotiated contract. This example is what we mean by an unsolicited proposal.

Accordingly, any proposal, invited or not, that is introduced where the Government has no prior intention of conducting a public bidding must still be categorized as "unsolicited." This interpretation will not prove disastrous inasmuch as the law itself has provided adequate safeguards. Moreover, the abhorred capricious awarding of a project to a preferred party is effectively hindered by the mandate for a subsequent invitation for comparative proposals.

III.
Deviations from the BOT Law

Having shown that API's proposal was really an unsolicited proposal, let me next carefully show that the petitioner complied with the BOT Law.

In our Decision, we held:

> The IRR specified the requirement of publication of the invitation for submission of proposals, as follows:
>
> > SEC. 10.11. *Invitation for Comparative Proposals*. — The Agency/LGU shall publish the invitation for comparative or competitive proposals **only after ICC/Local Sanggunian issues a no objection clearance of the draft contract**. The invitation for comparative or competitive proposals should be published at least once every week for three (3) weeks in at least one (1) newspaper of general circulation. It shall **indicate the time, which should not be earlier than the last date of publication, and place where tender/bidding documents could be obtained.** It shall likewise explicitly specify a time of **sixty (60) working days reckoned from the date of issuance of the tender/bidding documents** upon which proposals shall be received. Beyond said deadline, no proposals shall be accepted. A pre-bid conference shall be conducted ten (10) working days after the issuance of the tender/bidding documents. (Emphasis supplied.)
>
> The above provision highlighted other violations in the bidding procedure for the subject BOT project. *First*, there was no prior approval by the Investment Coordinating Committee of the National Economic Development Authority (ICC-NEDA) of the Wag-Wag Shopping Mall project. **Under the BOT Law, local projects to be implemented by the local government units concerned costing**

above ₱200 million shall be submitted for confirmation to the ICC-NEDA. Such requisite approval shall be applied for and should be secured by the head of the LGU prior to the call for bids for the project. *Second*, the law requires publication in a newspaper of general circulation. To be a newspaper of general circulation, it is enough that it is published for the dissemination of local news and general information, that it has a *bona fide* subscription list of paying subscribers, and that it is published at regular intervals. Over and above all these, the newspaper must be available to the public in general, and not just to a select few chosen by the publisher. **Petitioner did not submit in evidence the affidavit of the publisher attesting to *Pinoy* tabloid as such newspaper of general circulation.** And *third*, even assuming that *Pinoy* was indeed a newspaper of general circulation, the invitation published indicated a shorter period of submission of comparative proposals, only thirty (30) days instead of the prescribed sixty (60) days counted from the date of issuance of tender documents. (Emphasis supplied)

I believe that we must thoroughly revisit our finding about the lack of prior approval by the ICC and about the failure of the petitioner to submit the affidavit of the publisher of *Pinoy* tabloid that would confirm its being a newspaper of general circulation. There was no basis for the finding.

Firstly, the finding was unfortunate because it was not for the petitioner to prove that he had complied with such requirements, but rather for the Prosecution to establish the fact of non-compliance with the requirements in a degree that would justify the presence of the elements of the crime charged. We apparently thereby brushed aside the well-settled rule in criminal cases that it was the Prosecution, not the accused, who has the burden of proof to establish guilt beyond reasonable doubt.[29]

Secondly, we have thereby ignored that the vigorous objection raised herein had been only about the publication

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[29] Section 1 (a), Rule 115, *Rules of Court*, which states that the accused has the right: "To be presumed innocent until the contrary is proved beyond reasonable doubt"; Section 2, Rule 133, *Rules of Court*, which provides that: "In a criminal case, the accused is entitled to an acquittal, unless his guilt is

of the invitation being for a period shorter than the law required, and about *Pinoy* being a mere tabloid.

Anent the requirement for ICC approval, the Decision, citing Section 4 of Republic Act No. 6957, as amended by Republic Act No. 7718,[30] and Section 2.3 of the IRR,[31] held that projects costing over ₱200 million should be submitted for confirmation by the ICC-NEDA, and the approval should be applied for and secured prior to the bidding by the petitioner as the head of the local government unit.

Yet, a closer look readily shows that cited provisions related to *priority projects*, of which the Wag-Wag Shopping Mall project was not. The records indicate that the project was classified by the SB as "nonpriority" through its Resolution No. 230, S-95 owing to "the large amount of investment

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shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind." *Boac v. People*, G.R. No. 180597, November 7, 2008, 570 SCRA 533, 548.

[30] SEC. 4. Priority Projects. — x x x

The list of local projects to be implemented by the local government units concerned shall be submitted for confirmation to the municipal development council for projects costing up to Twenty million pesos; those costing above Twenty up to Fifty million pesos to the provincial development council; those costing up to Fifty Million pesos to the city development council; above Fifty Million up to Two hundred million pesos to the regional development councils; and those above Two hundred million pesos to the ICC of the NEDA.

[31] Sec. 2.3. *List of Priority Projects*. — Concerned Agencies/LGUs are tasked to prepare their infrastructure/development programs and to identify specific priority projects that may be financed, constructed, operated and maintained by the private sector through the contractual arrangements or schemes authorized under these IRR.

The projects require the approval of either the NEDA Board, ICC or Local Development Councils (LDCs) and respective Sanggunians as specified in Section 2.7. Such requisite approval shall be applied for and should be secured by the Head of Agency/LGU **prior to the call for bids for the project.** For this purpose, the Head of Agency/LGU may submit projects for inclusion in the list, for approval by the appropriate approving authority, as often as is necessary. Approved projects shall constitute the List of Priority Projects.

therein" that the Municipality could not shoulder. The inapplicability of the provisions was bolstered by Section 2.8 of the IRR, which states:

> 2.8. *ICC Approval of Projects*. — The review and approval of projects by ICC, as indicated above, including those proposed for BOO implementation, shall be in accordance with the guidelines of the ICC, attached hereto as Annex B.
>
> For publicly-bid projects, **the ICC approval of the project should be secured** prior to bidding and **for unsolicited proposals prior to negotiation with the original proponent.**

Considering that priority projects were not eligible for unsolicited proposals,[32] Section 2.8 should be construed to pertain only to projects other than priority ones.

With the Wag-Wag Shopping Mall being a non-priority project, and API's proposal being unsolicited, what then applied was the requirement of ICC approval prior to the negotiation with API as the proponent. **There being no evidence on record that proved non-compliance with the requirements, the Court thus had no real and proper factual bases to find and hold that Alvarez had failed to prove compliance.**

In its Comment on the petition for review, the Office of the Solicitor General (OSG) tendered a sweeping statement that "there was no showing that Petitioner [Alvarez] sought the prior approval or confirmation by the ICC of NEDA of the said undertaking." The trial records show, on the other hand, that the Prosecution and the Sandiganbayan heavily banked on the *supposed* violations of the regular bidding procedures or, in the alternative, on the irregularities in the publication of the Invitation for BOT Project, without showing that the violations had been actual, or that the publication had been grossly defective and deficient.

Anent *Pinoy*, the petitioner's failure to present the affidavit of the publisher attesting to *Pinoy*'s being a newspaper of general circulation was fatal to the cause of the Prosecution, but not to

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[32] Section 10.3, IRR.

the cause of the Defense. There was in favor of the petitioner the presumption of regularity in the performance of official duty from his availing of the publication services of *Pinoy* as a newspaper of general circulation.[33] The presumption could be rebutted only by the Prosecution adducing clear and convincing affirmative evidence of irregularity or failure to perform a duty.[34] Towards that end, every reasonable intendment was to be made in support of the presumption; in case of any doubt as to an officer's act being lawful or unlawful, the construction should be in favor of its lawfulness. Without the Prosecution adducing such rebutting evidence, the presumption became conclusive herein.

Thirdly, the period of only 30 days for the submission of comparative proposals provided in the Invitation for BOT Project that the petitioner signed being shorter than required should not be a factor of any irregularity.

Although an unsolicited proposal for projects may be accepted if, after the publication, no other proposal is received for a period of 60 working days, the BOT Law does not actually provide the time when the 60-day period is to commence. On the other hand, Section 10.11 of the IRR contains the following relevant instructions:

> **1.** The invitation for comparative or competitive proposals shall **indicate the time, which should not be earlier than the last date of publication, and the place where tender/ bidding documents can be obtained;**
>
> **2. The invitation shall likewise explicitly specify a time of 60 working days reckoned from the date of issuance of the tender/bidding documents upon which proposals shall be received;** beyond said deadline, no proposals shall be accepted.
>
> **3. A pre-bid conference shall be conducted 10 working days after the issuance of the tender/bidding documents.**

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[33] Section 3 (j), Rule 131, *Rules of Court.*

[34] *Bustillo v. People*, G.R. No. 160718, May 12, 2010, 620 SCRA 483, 492.

The Invitation for BOT Project did not state the time when and the place where the tender/bidding documents could be obtained; did not indicate a specific time of 60 working days reckoned from the date of issuance of the tender/bidding documents within which proposals would be received; and directed the submission of proposals within only 30 days from the date of its *first* publication.

Yet, the failure to literally comply with the BOT Law and the IRR was not enough justification to conclude adversely against the petitioner. Let me explain why.

Upon being invited to bid, any prospective bidder could not just quickly present himself to the Government with a proposal ready at hand. This is because every knowledgeable bidder was expected to know that it would only be through the bid/tender documents that he would determine how to formulate the bid. Thus, any party interested in the Wag-Wag Shopping Mall project had to secure first the bid/tender documents from the Office of the Mayor. The period of 30 days stated in the invitation, instead of being considered as the period for a prospective bidder to submit a proposal, should be understood as referring to the period *within which a comparative bidder should obtain the bid/tender documents.* In this context, the obtention of the bid/tender documents was, after the publication of the invitation, the *next unavoidable step* for the bidding process to start rolling. The next step thereafter would be the pre-bid conference, to be conducted 10 working days from the issuance of the tender/bidding documents.[35]

For the Wag-Wag Shopping Mall project, counting the 30 days from the date of *first* publication (February 9, 1996), the interested public had until March 10, 1996 to obtain the bid/tender documents. That was 16 days from the date of last publication (February 23, 1996). A time frame of 16 days was reasonable, and was in fact even more beneficial to prospective bidders by virtue of their not being limited

[35] Section 10.11, IRR.

to one particular day. The time frame was also in full accord with the IRR, whose only parameter being that the time to obtain the bid/tender documents not be earlier than the last date of publication.

Another requirement under Section 10.11 of the IRR, was the indication of the place where the bid/tender documents would be obtained. Considering that any interested party could easily infer from the Invitation that any response to the invitation had to be coursed through the Office of the Mayor, that requirement was met in this case, and the place was the Office of the Mayor. **But no one went to obtain the bid/tender documents, or even to inquire about the subject of the published invitation. As a result, with the Municipality having no other comparative proposal to consider and pass upon, no pre-bid conference was conducted.**

Underscoring the other violations attributed to the petitioner, the Decision said the following:

> There is likewise no showing that API complied with the submission of a complete proposal required under the IRR:
>
> > SEC. 10.5 *Submission of a Complete Proposal*. — For a proposal to be considered by the Agency/LGU, the proponent has to submit a complete proposal which shall include a feasibility study, **company profile** as outlined in Annex A, and the basic contractual terms and conditions on the obligations of the proponent and the government. The Agency/LGU shall acknowledge receipt of the proposal and advice the proponent whether the proposal is complete or incomplete. If incomplete, it shall indicate what information is lacking or necessary. (Emphasis supplied.)
>
> As correctly pointed out by the Sandiganbayan, API's proposal showed that it lacked the above requirements as it did not include a company profile and the basic contractual terms and conditions on the obligations of the proponent/contractor and the government. Had such company profile been required of API, the municipal government could have been apprised of the fact that said contractor/proponent had been in existence for only three months at that time and had not yet completed a project, although APRI, which actually undertook the Calamba and Lemery shopping centers also under

BOT scheme, is allegedly the same entity as API which have the same set of incorporators and directors. But more important, the municipality could have realized earlier, on the basis of financial statements and experience in construction included in the company profile, that API could not possibly comply with the huge financial outlay for the Wag-Wag Shopping Mall project. It could have also noted the fact that the aforesaid BOT shopping centers in Lemery and Calamba being implemented by APRI at that time were not yet finished or completed. In any event, such existing BOT contract of APRI with another LGU neither justified non-compliance by API with the submission of a complete proposal for the Wag-Wag Shopping Mall project for a competent evaluation by the PBAC.

The findings on the other violations were unfair. It is noteworthy that the petitioner's first direct participation in the Wag-Wag Shopping Mall project was his signing of the Invitation for BOT Project. Still, we should deduce that by that time, API would have been pre-qualified, its company profile assessed, and its proposal evaluated by the Municipality. We should presume that the SB had undertaken the evaluation because it was the SB, after all, that had invited API pursuant to its Resolution No. 136, S-95,[36] adopted the BOT scheme for the Wag-Wag Shopping Mall project through its Resolution No. 230, S-95,[37] and created a Special Committee on Build Operate and Transfer through Resolution No. 262, S-95 shortly after API had submitted its proposal.[38] The function of evaluation appropriately fell on the shoulders of the SB, not on the petitioner's, because the project would entail the disbursement of municipal funds.

In short, whatever the petitioner had to do with the project *prior to* his signing of the Invitation for BOT Project should not be left to guesswork.

It is true that the IRR contained a directive for the head of the local government unit to secure the ICC clearance for the unsolicited proposal prior to any negotiations with the original

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[36] *Rollo*, p. 153.

[37] *Id*. at 155.

[38] *Id*. at 156.

proponent.[39] But there was no proof adduced by the Prosecution showing the non-compliance with this requirement. Hence, we should resolve the issue in favor of compliance. The consequence of so resolving is to accept that the petitioner was charged with actual knowledge of the proposal and of the qualifications of API. Nonetheless, despite such actual knowledge, the responsibility for securing the approval should not be thrown exclusively in his direction, for securing the approval was a purely ministerial duty. In this regard, the petitioner had to endorse the proposal to the ICC without yet needing to exercise his discretion. He was under no mandate to review the proposal at that stage. The only time that he, as the head of a local government unit, would use his discretion was after the submission by the PBAC of the recommendation to award, upon which he, as the head of the local government unit, would then decide.[40]

Fourthly, we further agree with the Sandiganbayan that "there was no in-depth negotiation as to the project scope, implementation and arrangements and concession agreement, which are supposed to be used in the Terms of Reference (TOR). Such TOR would have provided the interested competitors the basis for their proposed cost, and its absence in this case is an indication that any possible competing proposal was intentionally avoided or altogether eliminated."

I am apprehensive that we have thereby allowed ourselves to draw a decisive conclusion even without proper factual support. I have carefully perused the decision of the Sandiganbayan under review and have not come across any portion of it that might have contained the factual basis from which the Sandiganbayan derived its conclusory pronouncement. The absence of the factual basis necessitates a reversal of our affirmance of the Sandiganbayan, for, indeed, the People did not even attempt to make these matters a point of contention.

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[39] Section 10.8, Section 2.8, IRR.

[40] Section 11.2, IRR.

Fifthly, another established act of the petitioner was his signing of the Resolution whereby the PBAC recommended both the acceptance of API's unsolicited proposal and the awarding of the contract to API. Upon careful analysis, however, I find that his signature on the PBAC Resolution was by virtue of his capacity as the PBAC Chairman, a capacity that he had not arrogated unto himself due to its having been conferred by law.[41] As the PBAC Chairman, he could participate in the recommendation in two ways, namely: by signing the Resolution, and, by voting in case of a tie.[42] The PBAC Resolution showed six members under the chairmanship of the petitioner. A member, Angelo C. Abellera, had no signature on the Resolution; hence, he did not have any involvement in its passage. Only five members remained, rendering a tie impossible. Based on such circumstances, the petitioner could not have voted for the recommendation in favor of API.

Sixthly, the Sandiganbayan further found that the petitioner had requested the SB to authorize him to enter into a MOA with API, for which the SB had then passed the resolution for that purpose.

The finding was of no material consequence.

The request and the Resolution were unnecessary and superfluous due to the fact that no other proposal had been submitted to outdo the proposal of API. Under the law, awarding the contract to API was a matter of course. As to this, the Court observed in *Asia's Emerging Dragon Corporation v. Department of Transportation and Communications*,[43] to wit:

> x x x In the 18 April 2008 Decision, we have already exhaustively scrutinized Section 4-A of the BOT Law, as amended, in relation to its IRR, and in consideration of the intent of the legislators who crafted the BOT Law. We find no reason to disturb our conclusion therein that:

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[41] Section 3.1, IRR; Section 37, R.A. No. 7160.

[42] Section 3.3, IRR.

[43] G.R. Nos. 169914 and 174166, April 7, 2009, 584 SCRA 355.

> The special rights or privileges of an original proponent thus come into play only when there are other proposals submitted during the public bidding of the infrastructure project. As can be gleaned from the plain language of the statutes and the IRR, the original proponent has: (1) the right to match the lowest or most advantageous proposal within 30 working days from notice thereof, and (2) in the event that the original proponent is able to match the lowest or most advantageous proposal submitted, then it has the right to be awarded the project. The second right or privilege is contingent upon the actual exercise by the original proponent of the first right or privilege. Before the project could be awarded to the original proponent, he must have been able to match the lowest or most advantageous proposal within the prescribed period. Hence, when the original proponent is able to timely match the lowest or most advantageous proposal, with all things being equal, it shall enjoy preference in the awarding of the infrastructure project.
>
> It is without question that in a situation where there is **no other competitive bid** submitted for the BOT project that the project would be awarded to the original proponent thereof. However, **when there are competitive bids submitted,** the original proponent must be able to match the most advantageous or lowest bid; only when it is able to do so, will the original proponent enjoy the preferential right to the award of the project over the other bidder. These are the general circumstances covered by Section 4-A of Republic Act No. 6957, as amended. (Underscoring supplied)

IV
Alvarez did not violate Section 3(*e*)

The Decision declared that the petitioner had failed to ensure that API would meet the conditions prescribed by Section 11.7 and Section 12.7 of the IRR, namely: (*a*) performance security; (*b*) proof of sufficient equity; and (*c*) ICC clearance of the contract on a no-objection basis.

The petitioner argues that these requirements did not apply because they were not enumerated in Rule 10 of the IRR, the issuance governing unsolicited proposals.

The argument of the petitioner cannot be sustained.

Rule 10 provided the procedure in the handling of an unsolicited proposal. Its last three sections related to "submission of proposal," "evaluation of proposals" and "disclosure of the price proposal." If the petitioner's argument was followed, nothing could come out of unsolicited proposals because Rule 10 did not provide the mechanism for the awarding of the contract. To answer the hanging question of whether Alvarez observed the IRR in awarding the contract, resort must necessarily be had to Rule 11, entitled "Award and Signing of Contract" and Rule 12, entitled "Contract Approval and Recommendation." The separate processes for unsolicited proposals and for publicly-bidded projects find their confluence in both Rules.

In view of the foregoing, we should determine if the petitioner deliberately disregarded the BOT Law and its IRR as to warrant his prosecution for and conviction of a violation of Section 3(*e*) of Republic Act No. 3019.

Section 3(*e*) of Republic Act No. 3019 states:

> Section 3. *Corrupt Practices of Public Officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful.
>
> x x x x x x x x x
>
> (*e*) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant or licenses or permits or other concessions.
>
> x x x x x x x x x

The State must prove the following essential elements of Section 3(*e*) offense, as follows:

1. The accused is a public officer discharging administrative, judicial, or official functions;

2. The accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and

3. The action of the accused caused undue injury to any party, including the Government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[44]

That the petitioner, being then the incumbent Mayor of his Municipality, was a public official on the date in question showed the attendance of the first element.

As to the second element (that the accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence), which involve the three modes of committing the crime, we have enunciated in *Fonacier v. Sandiganbayan*[45] that the three modes are distinct and different from each other, to wit:

> The second element enumerates the different modes by which means the offense penalized in Section 3 (e) may be committed. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property." These definition different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3 (e) should suffice to warrant conviction.

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[44] *People v. Romualdez*, G.R. No. 166510, July 23, 2008, 559 SCRA 492, 509-510; *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004, 441 SCRA 377, 386.

[45] G.R. Nos. 50691, 52263, 52766, 52821, 53350, 53397, 53415 & 53520, December 5, 1994, 238 SCRA 655, 687-688.

IV.a.
Manifest partiality and gross inexcusable negligence were not competently established

In our Decision, we held that "the prosecution was able to successfully demonstrate that [Alvarez] acted with manifest partiality and gross inexcusable negligence in awarding the BOT contract to an unlicensed and financially unqualified private entity." As basis thereof, the Decision cited the petitioner's non-compliance with the BOT Law and its IRR, and made the following pronouncement:

> Under the facts established, it is clear that petitioner gave unwarranted benefits, advantage or preference to API considering that said proponent/contractor was not financially and technically qualified for the BOT project awarded to it, and *without complying with the requirements of bidding and contract approval for BOT projects* under existing laws, rules and regulations.

The word "unwarranted" means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. As to "partiality," "bad faith," and "gross inexcusable negligence," we have explained the meaning of these terms, as follows:

> "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."

We sustain and affirm the Sandiganbayan in holding that petitioner violated Section 3(e) of R.A. No. 3019, and that he cannot shield himself from criminal liability simply because the SB passed the necessary resolutions adopting the BOT project and authorizing him to enter into the MOA. We find no error or grave abuse in its ruling, which we herein quote:

> It is apparent that the unwarranted benefit in this case lies in the very fact that API was allowed to present its proposal without compliance of *[sic]* the requirements provided under the relevant laws and rules. To begin with, the municipal government never conducted a public bidding prior to the execution of the contract. The project was immediately awarded to the API without delay and without any rival proponents, when it was not qualified to participate in the first place. The legality and propriety of the agreement executed with the contractor is totally absent based on the testimonies of both the prosecution and the defense.
>
> This Court also considers these particular acts significant. *First*. From the testimony of then Vice-Mayor Ruiz, Jesus V. Garcia, the president of API, attended the SB session after paying a courtesy call to the Accused who was then the Mayor. *Second*. It was the Accused who signed and posted the Invitation to Bid (Exhibit N) giving proponents 30 days to submit their proposals. *Third*. The Accused is the head of the Pre-Qualification Bids and Awards Committee which according to him recommended the approval of API's proposal. This was the reason he used in requesting authority from the SB to grant him the authority to contract with API. *Fourth*. The Accused requested the SB to give him authority to enter into an agreement with API through a resolution (Exhibit S)[.] *Fifth*. It was the Accused who invited the SB members to go to the Mayor's office to witness the signing of the Memorandum of Agreement between the municipality and API.

I submit that the Sandiganbayan gravely erred and that we should not affirm its error. The established facts showed that the petitioner neither extended any favors to nor manifested partiality towards API. He also did not give any unwarranted benefits to API.

As I previously pointed out, the only significant acts of the petitioner proved by the Prosecution were his signing of the Invitation for BOT Project; his causing of the publication thereof; his signing of the PBAC Resolution recommending the award to API of the contract; and his signing of the MOA for the project — all of which had mitigating, if not justifying, factors that I already stated in my foregoing discussions. But none of such acts could be read as manifesting partiality or giving unwarranted benefits to API.

For one, the Decision declared that "(t)he project was immediately awarded to the API without delay and without any rival proponents." However, the declaration was belied by the fact that the petitioner had to invite investors to "finance, construct and operate"[46] the Wag-Wag Shopping Mall project. The Invitation, despite its faults, was still an invitation, and it unquestionably demonstrated the intention of the petitioner to give the interested public the reasonable opportunity for competition. In the end, because no other company except API showed any interest in the project, no comparative offer was made to surpass API's proposal.

Anent the alleged fault in the Invitation, in that it gave a period of only 30 days from the date of first publication within which the prospective bidders would submit their proposals, the fact that the period was shorter than what the law required should not be seen as a sign of bias or partiality towards API or of giving unwarranted benefits to API. The Invitation was first published on February 9, 1996. Were it true that the petitioner had been biased towards API, would he not have moved at lightning speed, in a manner of speaking, in order to award the contract by March 10, 1996, the end of the 30-day period? The records show that he did not. Instead, he first sought and obtained the recommendation of the PBAC, which recommendation came about on April 12, 1996, *or a month after the accrual to API of the right to be awarded the contract*. Equally noteworthy was that, despite API's proposal being uncontested and the contract could have already been

[46] *Rollo*, p. 152.

awarded to API for that reason, the petitioner still first secured the *express authorization* of the SB for him to enter into a MOA with API. He awarded the contract only on September 12, 1996, *five long months after the PBAC had made its recommendation on the matter.*

Moreover, the petitioner himself did not initiate dealings with API. That was done by the SB itself. The SB got him to be interested by showing to him the newspapers advertising the projects undertaken by API in the Provinces of Laguna and Batangas. It was the SB, not Alvarez, that invited API (represented by Garcia) to attend one of its sessions for the purpose of having API share with the SB its knowledge on the proposed project to be pursued under the BOT Law.[47]

On the other hand, the petitioner deserved credit for two things that indicated he did not extend any unwarranted benefits to API in connection with the project. The first was that he required API to pay to the Municipality the substantial sum of ₱500,000.00 as a relocation or disturbance fee to compensate for the demolition of the already condemned structures standing on the project site. There was no question about the structures being already *without economic value* to the Municipality *after they had been declared as a nuisance and duly condemned for demolition*. The other was that he prosecuted API by bringing a civil action for rescission and damages when API defaulted on its contractual obligation.

Section 3(*e*) of Republic Act No. 3019 requires that partiality must be manifest. But the petitioner's actuations could not be categorized as manifestly partial. His *minimal* participation in the transaction could not be characterized by bias. His seeking the intervention of both the SB and the PBAC before taking action in favor of API belied any partiality towards API. He opted to share with the members of the SB and the PBAC the responsibility for making any decision on the project. All these showed that he himself sought and put in place stumbling blocks that did not at all make it easy and simple for API to get the project.

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[47] *Id*. at 63.

In the Notice of Award, the petitioner directed API to submit its performance security, proof of sufficient equity, and ICC clearance of the contract on a no-objection basis. But the requirements were not submitted. The reason for this was that API's counsel, Atty. Lydia Y. Marciano, insisted that such requirements did not apply because the project did not involve any government undertaking. Apparently, the petitioner relied on Atty. Marciano's representation.

Even assuming that the representations of API's counsel were erroneous, the petitioner's reliance upon them was justifiable under the circumstances. Firstly, he was only a layman as compared to Atty. Marciano who was presumed to be possessed of a satisfactory knowledge of the pertinent law. Secondly, he knew that the Municipality would not be releasing any funds from its coffers intended for the project. I am sure that the impression left by Atty. Marciano's representations was that there was nothing to lose on the part of the Municipality should API fail to perform its obligations. And, thirdly, both the SB and the PBAC previously found API to be qualified for the project. In addition, there were the news reports indicating API's capacity to undertake the BOT project.

Anent negligence, any omissions that the petitioner committed along the way were due only to either mere inadvertence, or simple over-eagerness to proceed with a worthwhile project, or placing too much confidence in the declarations of subordinates and Atty. Marciano. **I submit that the omissions would amount, at worst, only to gross negligence, which is want or absence of reasonable care and skill.**

Section 3(*e*) of Republic Act No. 3019 required that the gross negligence must also be inexcusable. In other words, the gross negligence should have no excuse. But that was not so herein, for, according to *Sistoza*,[48] g*ross inexcusable negligence* —

x x x does not signify mere omission of duties nor plainly the exercise of less than the standard degree of prudence. Rather, it

[48] G.R. No. 144784, September 3, 2002, 388 SCRA 307, 326.

refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, **with conscious indifference to consequences insofar as other persons may be affected.** It entails the omission of care that even inattentive and thoughtless men never fail to take on their own property, and **in cases involving public officials it takes place only when breach of duty is flagrant and devious.**[49]

In the same case of *Sistoza*, the Court took the occasion to lengthily discuss why a prosecution for Section 3(*e*) of Republic Act No. 3019 did not lie against Siztoza, *viz*:

Clearly, the issue of petitioner Sistoza's criminal liability does not depend solely upon the allegedly scandalous irregularity of the bidding procedure for which prosecution may perhaps be proper. For even if it were true and proved beyond reasonable doubt that the bidding had been rigged, an issue that we do not confront and decide in the instant case, this pronouncement alone does not automatically result in finding the act of petitioner similarly culpable. **It is presumed that he acted in good faith in relying upon the documents he signed and thereafter endorsed. To establish a *prima facie* case against petitioner for violation of Sec. 3, par. (e), *RA 3019*, the prosecution must show not only the defects in the bidding procedure, x x x but also the alleged evident bad faith, gross inexcusable negligence or manifest partiality of petitioner** in affixing his signature on the purchase order and repeatedly endorsing the award earlier made by his subordinates despite his knowledge that the winning bidder did not offer the lowest price. **Absent a well-grounded and reasonable belief that petitioner perpetrated these acts in the criminal manner he is accused of, there is no basis for declaring the existence of probable cause.**

As defined above, the acts charged against petitioner do not amount to manifest partiality, evident bad faith nor gross inexcusable negligence which should otherwise merit a prosecution for violation of Sec. 3, par. (e), *RA 3019*. It is not disputed that petitioner relied upon supporting documents apparently dependable as well as

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[49] *Id*., citing *De la Victoria v. Mongaya*, A.M. No. P-00-1436, February 19, 2001, 352 SCRA 12, 20.

certifications of regularity made by responsible public officers of three (3) office divisions of the Bureau of Corrections before affixing his signature on the purchase order. x x x

The fact that petitioner had knowledge of the status of Elias General Merchandising as being only the second lowest bidder does not *ipso facto* characterize petitioner's act of reliance as recklessly imprudent without which the crime could not have been accomplished. Albeit misplaced, reliance in good faith by a head of office on a subordinate upon whom the primary responsibility rests negates an imputation of conspiracy by gross inexcusable negligence to commit graft and corruption. As things stand, petitioner is presumed to have acted honestly and sincerely when he depended upon responsible assurances that everything was aboveboard x x x

Verily, even if petitioner erred in his assessment of the extrinsic and intrinsic validity of the documents presented to him for endorsement, his act is all the same imbued with good faith because the otherwise faulty reliance upon his subordinates, who were primarily in charge of the task, falls within parameters of tolerable judgment and permissible margins of error. Stated differently, granting that there were flaws in the bidding procedures, x x x there was no cause for petitioner Sistoza to complain nor dispute the choice nor even investigate further since neither the defects in the process nor the unfairness or injustice in the actions of his subalterns are definite, certain, patent and palpable from a perusal of the supporting documents. x x x "[w]hen x x x we speak of the law as settled, though, no matter how great the apparent settlement, the possibility of error in the prediction is always present." Given that the acts herein charged failed to demonstrate a well-grounded belief that petitioner had *prima facie* foreknowledge of irregularity in the selection of the winning bid other than the alleged fact that such bid was not the lowest, we cannot conclude that he was involved in any conspiracy to rig the bidding in favor of Elias General Merchandising.

The instant case brings to the fore the importance of clearly differentiating between acts simply negligent and deeds grossly and inexcusably negligent punishable under Sec. 3, par. (e), of the *Anti- Graft and Corrupt Practices Act*. While we do not excuse petitioner's manner of reviewing the award of the supply of tomato paste in favor of Elias General Merchandising, whereby he cursorily perused the purchase order and readily affixed his

signature upon it, since he could have checked the supporting documents more lengthily, it is our considered opinion that his actions were not of such nature and degree as to be considered brazen, flagrant and palpable to merit a criminal prosecution for violation of Sec. 3, par. (e), of *RA 3019*. To paraphrase *Magsuci v. Sandiganbayan*, petitioner might have indeed been lax and administratively remiss in placing too much reliance on the official documents and assessments of his subordinates, but **for conspiracy of silence and inaction to exist it is essential that there must be patent and conscious criminal design, not merely inadvertence, under circumstances that would have pricked curiosity and prompted inquiries into the transaction because of obvious and definite defects in its execution and substance.** To stress, there were no such patent and established flaws in the award made to Elias General Merchandising that would have made his silence tantamount to tacit approval of the irregularity. (Emphases supplied)

IV.b.
Dearth of evidence to prove actual injury to any party or to the Government

My next submission is that the finding of the Sandiganbayan that the Municipality of Muñoz suffered undue injury from the nonperformance of the contractual obligations of API was speculative and unwarranted.

The injury that Section 3(*e*) of Republic Act No. 3019 contemplates is **actual damage** as the term is understood under the *Civil Code*. In *Llorente, Jr. v. Sandiganbayan*,[50] the Court made this concept of undue injury very clear, saying:

Unlike in actions for torts, undue injury in Sec. 3 (e) cannot be presumed even after a wrong or a violation of right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith, or gross inexcusable negligence constitutes the very act punished under this section. **Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty**.

[50] G.R. No. 122166, March 11, 1998, 287 SCRA 382, 399-400.

In jurisprudence, "undue injury" is consistently interpreted as "actual damage." *Undue* has been defined as "more than necessary, not proper, [or] illegal"; and *injury* as "any wrong or damage done to another, either in his person, rights, reputation or property[;] [that is, the] invasion of any legally protected interest of another." Actual damage, in the context of these definitions, is akin to that in civil law.

In turn, actual or compensatory damages of a person is defined by Art. 2199, *Civil Code*, as "such pecuniary loss suffered by him as he has duly proved." x x x

Fundamental in the law on damages is that one injured by a breach of contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant's act. Actual pecuniary compensation is awarded as a general rule, except where the circumstances warrant the allowance of other kinds of damages. Actual damages are primarily intended to simply make good or replace the loss caused by the wrong.

Furthermore, damages must not only be capable of proof, but must actually be proven with a reasonable degree of certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork. They cannot include speculative damages which are too remote to be included in an accurate estimate of the loss or injury.

In its decision, the Sandiganbayan pertinently held:

As a defense, accused claims that there was no undue injury in this case. He said that there was no wastage considering that the demolished buildings were already condemned. The demolition will give way to a dreamed edifice. Disturbance compensation was advance by API to the municipality.

This Court finds these defenses bereft of merit. There is no doubt that the Government suffered actual damage due to the acts of the Accused. The damage suffered is visibly demonstrable. The alleged prejudice and damage to the municipal government has been proven by the prosecution with moral certainty. His acts unmistakably resulted in the Government's unlawful loss of several of its buildings or offices. The municipal government likewise deployed its resources including equipments, personnel and financial outlay for fuel and

repairs in the demolition of the buildings. Had accused been unfaltering in performing his duties under the law, the government would have not suffered such loss and undue injury and it could have been avoided and prevented early on. Had accused followed the BOT law, API would have been required to post a performance security to guarantee its faithful performance of the obligations under the contract. When API failed to complete the work within the construction period prescribed, the performance security would have been forfeited to answer for any liquidated damages due to the Municipality of Muñoz. At the very least, the municipality is entitled to two percent (2%) of the project cost of Two Hundred Forty Million Pesos (Php 240,000,000.00) or an equivalent of Four Million Eight Hundred Thousand Pesos (Php 4,800,000.00).[51]

x x x x x x x x x

ACCORDINGLY, accused **Efren L. Alvarez** is found guilty **beyond reasonable doubt** for violation of Section 3 (e) of Republic Act No. 3019 and is sentenced to suffer in prison the penalty of **6 years and 1 month to 10 years.** He also has to suffer perpetual disqualification from holding any public office and to indemnify the City Government of Muñoz (now Science), Nueva Ecija the amount of Four Million Eight Hundred Thousand Pesos (Php 4,800,000.00) less the Five Hundred Thousand Pesos (Php 500,000.00) API earlier paid the municipality as damages.

Costs against the accused.

SO ORDERED.[52]

The Decision of June 29, 2011 upheld the Sandiganbayan, as follows:

As to the propriety of damages awarded by the Sandiganbayan, we find that the same is proper and justified. The term "undue injury" in the context of Section 3(e) of the Anti-Graft and Corrupt Practices Act punishing the act of "causing undue injury to any party," has a meaning akin to that civil law concept of "actual damage." Actual damage, in the context of these definitions, is akin to that in civil law.

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[51] *Rollo*, pp. 80-81.

[52] *Id*. at 84.

Article 2199 of the Civil Code provides that *except as provided by law or by stipulation*, one is entitled to an adequate compensation only for such pecuniary loss suffered by a party as he has duly proved. Liquidated damages, on the other hand, are those agreed upon by the parties to a contract, to be paid in case of a breach thereof.

For approved BOT contracts, it is mandatory that a performance security be posted by the contractor/proponent in favor of the LGU in the form of cash, manager's check, cashier's check, irrevocable letter of credit or bank draft in the minimum amount of 2% of the total project cost. In case the default occurred during the project construction stage, the LGU shall likewise forfeit the performance security of the erring project proponent/contractor. The IRR thus provides:

> SEC. 12.13. *Liquidated Damages*. — Where the project proponent of a project fails to satisfactorily complete the work within the construction period prescribed in the contract, including any extension or grace period duly granted, and is thereby in default under the contract, the project proponent shall pay the Agency/LGU concerned liquidated damages, as may be agreed upon under the contract by the parties. The parties shall agree on the amount and schedule of payment of the liquidated damages. The performance security may be forfeited to answer for any liquidated damages due to the Agency/LGU. The amount of liquidated damages due for every calendar day of delay will be determined by the Agency/LGU. In no case however shall the delay exceed twenty percent (20%) of the approved construction time stipulated in the contract plus any time extension duly granted. In such an event the Agency/LGU concerned shall rescind the contract, forfeit the proponent's performance security and proceed with the procedures prescribed under Section 12.19.b.

Had the requirement of performance security been complied with, there is no dispute that the Municipality of Muñoz would have been entitled to the forfeiture of performance security when API defaulted on its obligation to execute the construction contract, at the very least in an amount equivalent to 2% of the total project cost. Hence, said LGU is entitled to such damages which the law mandates to be incorporated in the BOT contract, the parties being at liberty only to stipulate the extent and amount thereof. To rule otherwise would mean a condonation of blatant disregard and violation of the provisions of the BOT law and its implementing rules and regulations which

are designed to protect the public interest in transactions between government and private business entities. While petitioner claims to have entered into a compromise agreement as authorized by the SB and approved by the trial court, no evidence of such judicial compromise was submitted before the Sandiganbayan.

WHEREFORE, the petition is DENIED. The Decision dated November 16, 2009 and Resolution dated June 9, 2010 of the Sandiganbayan in Criminal Case No. SB-06-CRM-0389 are AFFIRMED.

With costs against the petitioner.[53]

I observe that the Sandiganbayan rendered no factual finding of any actual damage suffered by the Municipality. What the decision contained on the requirement of actual damage were mere *conclusions of both fact and law*. But such conclusions did not satisfactorily meet the standard set in *Llorente, Jr.* to the effect that:

> **x x x damages must not only be capable of proof, but must actually be proven with a reasonable degree of certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork. They cannot include speculative damages which are too remote to be included in an accurate estimate of the loss or injury.**[54]

Speculative damages are too remote to be included in an accurate estimate of damages.[55] **In determining actual damages, the Court cannot rely on speculation, conjecture or guesswork as to the amount. Without the actual proof of loss, the award of actual damages becomes erroneous.**[56] **To be recoverable, actual damages must not only be capable of proof, but must actually be proved with reasonable degree of certainty. The Court cannot simply rely on speculation,**

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[53] *Id.* at 318-320.

[54] *Supra* at Note 50, p. 400.

[55] *Coca Cola Bottlers, Phils., Inc. v. Roque*, G.R. No. 118985, June 14, 1999, 308 SCRA 215, 223.

[56] *Lucas v. Royo*, G.R. No. 136185, October 30, 2000, 344 SCRA 481, 489.

conjecture, or guesswork in determining the amount of damages. Without any factual basis, it cannot be granted.[57]

It is true that the petitioner should have required API to post a performance bond of ₱4,800,000.00, which bond would have been forfeited in favor of the Municipality upon API's default. **But the failure to post the bond could not be the proof of actual injury because its face amount did not *per se* establish the actual loss of the Municipality.** For one, would undue injury still be deemed established had the bond been posted but the awarding of the contract had nonetheless suffered from other omissions? In that instance, if the Sandiganbayan's ratiocination against the petitioner was sustained, a prosecution for violation of Section 3(*e*) committed by causing undue injury to any party or the Government would be futile because the element of undue injury could then be difficult to prove.

At most, therefore, the failure of API to post the bond would subject the petitioner to some administrative liability for non-compliance with certain requirements prescribed by other laws in relation to procurement, but not criminal liability under Section 3(*e*).

Even worse was to have the petitioner be liable for the ₱4,800,000.00 performance bond. The Sandiganbayan apparently did not appreciate the fact that the petitioner, upon the express authority granted by the SB, and API entered into a compromise agreement that finally settled the issues between them and terminated the civil suit by the Municipality against API. As such, the Municipality became barred from asserting undue injury under the principle of *res judicata*,[58] **and could no longer recover *any further* from API.** A

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[57] *Magdala Multipurpose & Livelihood Cooperative v. Kilusang Manggagawa Ng Lgs, Magdala Multipurpose & Livelihood Cooperative (KMLMS)*, G.R. Nos. 191138-39, October 19, 2011.

[58] The *Civil Code* provides:

Article 2037. A compromise has upon the parties the effect and authority of *res judicata*; but there shall be no execution except in compliance with a judicial compromise. (1816)

compromise is a contract whereby the parties, by making reciprocal concessions, *avoid a litigation or put an end to one already commenced*.[59] The entering into the compromise agreement served the public policy announced in the *Civil Code* for the courts in civil actions *to endeavor to persuade the litigants in a civil case to agree upon some fair compromise*.[60]

In truth, the Municipality did not lose anything of value at all. API paid ₱500,000.00 as reimbursement for the value of the condemned properties demolished to give way to the Wag-Wag Shopping Mall project. Hence, for the Municipality to be still paid the further amount of ₱4,800,000.00, less ₱500,000.00, would be unjust enrichment.

V.
Lack of evidence to prove the giving of unwarranted benefits

There was no factual basis for the Sandiganbayan to find that the petitioner gave unwarranted benefits to API. The fact is that the petitioner sought better offers from the public, as borne out by his causing the publication of the Invitation for BOT Project. It was further shown that he signed the MOA with API only after it was clear that no other proposals were presented for the Municipality to consider, and that the signing occurred on September 12, 1996, five long months after the PBAC had made its recommendation on the matter. The regularity of the signing was buttressed by the authority given to him by the SB.

Did API derive any benefits from the project?

Before giving the answer, I remind that in a BOT scheme, the proponent undertakes to build and operate the project, and to transfer the project to the Government after a certain period of time without need of payment to the proponent. The scheme benefits the proponent only after the finished project starts to

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[59] Article 2028, *Civil Code*.

[60] Article 2029. The court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise. (n)

operate, and during the operation the proponent earns and recoups its investments. Senator Tatad explained during the Senate deliberations on Republic Act No. 7718 how a project proponent would derive benefit or advantage from the BOT scheme, to wit:

> Under the build-and-transfer scheme, a project proponent — that is the new term used here — will undertake the construction of a project, raising its own financing, and upon completion turns over the project to a government agency or to a local government unit which is the party to the contract, according to an agreed schedule of payments.
>
> In the build-operate-transfer scheme, someone **builds a facility, operates the facility, and then at the end of a given period of time, say 25 years, not more than 50 years, the facility is transferred to the government. It does not cost the government anything.**[61]

Yet, API did not get any benefit from the project because it did not get to finish building the Wag-Wag Shopping Mall, let alone to operate it. Rather to the contrary, API was even compelled to shell out ₱500,000.00 to the Municipality for the demolition of the dilapidated buildings.

The word *unwarranted* means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason. In that regard, it is significant that the SB and the PBAC gave its official support to`the project. *Advantage* means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. *Preference* signifies priority or higher evaluation or desirability; choice or estimation above another.[62]

WHEREFORE, I **VOTE** to grant the motion for reconsideration of the petitioner and to vacate his conviction on the ground of failure of the State to prove his guilt beyond reasonable doubt.

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[61] Records of the Senate, 2nd Regular Session 1993-1994, Vol. III, Nos. 40-52, Interpellation of Sen. Tatad, p. 471.

[62] *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010, 614 SCRA 670.

SECOND DIVISION

[G.R. No. 193023. June 29, 2011]

NATIONAL POWER CORPORATION, *petitioner, vs.* **YUNITA TUAZON, ROSAURO TUAZON and MARIA TERESA TUAZON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; THE EXERCISE OF THE POWER OF EMINENT DOMAIN NECESSARILY INCLUDES THE IMPOSITION OF RIGHT-OF-WAY EASEMENTS UPON CONDEMNED PROPERTY WITHOUT LOSS OF TITLE OR POSSESSION. — The application of *Gutierrez* to the present case is well taken. The facts and issue of both cases are comparable. The right-of-way easement in the case similarly involved transmission lines traversing privately owned land. It likewise held that the transmission lines not only endangered life and limb, but restricted as well the owner's use of the land traversed. Our pronouncement in *Gutierrez* — that the exercise of the power of eminent domain necessarily includes the imposition of right-of-way easements upon condemned property without loss of title or possession — therefore remains doctrinal and should be applied. NAPOCOR's protest against the relevancy of *Gutierrez*, heavily relying as it does on the supposed conclusiveness of Section 3-A(b) of R.A. 6395 on just compensation due for properties traversed by transmission lines, has no merit. We have held in numerous cases that Section 3-A(b) is not conclusive upon the courts. In *National Power Corporation v. Maria Bagui, et al.*, we categorically held: Moreover, Section 3A-(b) of R.A. No. 6395, as amended, is not binding on the Court. It has been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function and that any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount.

2. ID.; ID.; ID.; THE DETERMINATION OF JUST COMPENSATION IN EXPROPRIATION CASES IS A FUNCTION ADDRESSED TO THE DISCRETION OF THE COURTS, AND MAY NOT BE USURPED BY ANY BRANCH OF THE GOVERNMENT. — The determination of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government. This judicial function has constitutional *raison d'être*; Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation. In *National Power Corporation v. Santa Loro Vda. de Capin, et al.*, we noted with approval the disquisition of the CA in this matter: The [herein petitioner] vehemently insists that its Charter [Section 3A (b) of R.A. 6395] obliges it to pay only a maximum of 10% of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower. To uphold such a contention would not only interfere with a judicial function but would also render as useless the protection guaranteed by our Constitution in Section 9, Article III of our Constitution that no private property shall be taken for public use without payment of just compensation.

3. ID.; ID.; ID.; A PRIVATE LAND TAKEN FOR THE INSTALLATION OF TRANSMISSION LINES IS TO BE PAID THE FULL MARKET VALUE OF THE LAND AS JUST COMPENSATION. — We categorically hold that private land taken for the installation of transmission lines is to be paid the full market value of the land as just compensation. We so ruled in *National Power Corporation v. Benjamin Ong Co,* and we reiterate this ruling today: As earlier mentioned, Section 3A of R.A. No. 6395, as amended, substantially provides that properties which will be traversed by transmission lines will only be considered as easements and just compensation for such right of way easement shall not exceed 10 percent of the market value. However, this Court has repeatedly ruled that when petitioner takes private property to construct transmission lines, it is liable to pay the full market value upon proper determination by the courts.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jose M. Mendiola for respondents.

D E C I S I O N

BRION, *J.*:

This is a petition for review filed under Rule 45 of the Rules of Court, seeking the reversal of the decision[1] (dated March 15, 2010) of the Court of Appeals (*CA*)[2] in CA-G.R. CV No. 82480, which set aside the order[3] of the Regional Trial Court (*RTC*) of Tarangnan, Samar, Branch 40, and remanded the case back to the RTC for determination of just compensation. The RTC had dismissed the complaint of respondents Yunita Tuazon, Rosauro Tuazon and Maria Teresa Tuazon against the National Power Corporation (*NAPOCOR*) for payment of just compensation and damages.

ANTECEDENTS

The antecedent facts are not in dispute.

The respondents are co-owners of a 136,736-square-meter coconut land[4] in Barangay Sta. Cruz, Tarangnan, Samar. The land has been declared for tax purposes in the name of the respondents' predecessor-in-interest, the late Mr. Pascual Tuazon. Sometime in 1996, NAPOCOR[5] installed transmission lines on a portion of the land for its 350 KV Leyte-Luzon HVDC Power

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[1] *Rollo*, pp. 41-49; penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Associate Justices Samuel H. Gaerlan and Socorro B. Inting.

[2] Twentieth Division, Cebu City.

[3] *Rollo*, p. 50; in Civil Case No. T-008, dated February 3, 2004, penned by Roberto A. Navidad, Acting Presiding Judge.

[4] Denominated as Lot No. 2646, CAD 706-D.

[5] Created pursuant to Republic Act No. 6395, also known as "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION."

TL Project. In the process, several improvements on the land were destroyed. Instead of initiating expropriation proceedings, however, NAPOCOR entered into a mere right-of-way agreement[6] with Mr. Tuazon for the total amount of **TWENTY-SIX THOUSAND NINE HUNDRED SEVENTY-EIGHT and 21/100 PESOS (₱26,978.21)**. The amount represents payments for "damaged improvements" **(₱23,970.00)**, "easement and tower occupancy fees" **(₱1,808.21)**, and "additional damaged improvements" **(₱1,200.00)**.

In 2002, the respondents filed a complaint against NAPOCOR for just compensation and damages, claiming that no expropriation proceedings were made and that they only allowed NAPOCOR entry into the land after being told that the fair market value would be paid. They also stated that lots similarly located in Catbalogan, Samar, likewise utilized by NAPOCOR for the similar projects, were paid just compensation in sums ranging from ₱2,000.00 to ₱2,200.00 per square meter, pursuant to the determination made by different branches of the RTC in Samar.

Instead of filing an answer, NAPOCOR filed a motion to dismiss based on the full satisfaction of the respondents' claims. The RTC granted the motion in this wise:

ORDER

Acting on the Motion to Dismiss and the Opposition thereto and after a very careful study of the arguments raised by the Parties, the court resolves in favor of the Defendant.

Accordingly, the Court hereby orders the DISMISSAL of this case without costs.

IT IS SO ORDERED.

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[6] Per the decision of the CA, the agreements are titled and dated as follows: (a) *Deed of Conveyance and Declaration of Ownership with Waiver of Claims to Improvements Damaged,* dated July 3, 1995; (b) *Deed of Conveyance and Declaration of Ownership with Waiver of Claims to Improvements Damaged*, dated August 4, 2007; and (c) *Right of Way Grant in Favor of National Power Corporation*, dated December 31, 1995.

Tarangnan, Samar, Philippines, February 3, 2004.

(Sgd.) ROBERTO A. NAVIDAD
Acting Presiding Judge[7]

The assailed decision of the Court of Appeals

The respondents filed an ordinary appeal with the CA. In its Appellee's Brief, NAPOCOR denied that expropriation had occurred. Instead, it claimed to have lawfully established a right-of-way easement on the land per its agreement with Mr. Tuazon, which agreement is in accord with its charter, Republic Act No. (R.A.) 6395. NAPOCOR maintained that Section 3-A(b) of R.A. 6395 gave it the right to acquire a right-of-way easement upon payment of "just compensation" equivalent to not more than 10% of the market value of a private lot traversed by transmission lines.[8]

The CA disagreed with the RTC. Citing *National Power Corporation v. Hon. Sylvia G. Aguirre-Paderanga, etc., et al.*[9] and *National Power Corporation v. Manubay Agro-Industrial Development Corporation*,[10] the CA pointed out that the demolition of the improvements on the land, as well as the installation of transmission lines thereon, constituted "taking" under the power of eminent domain, considering that transmission lines are hazardous and restrictive of the land's use for an indefinite period of time. Hence, the CA held that the respondents were entitled, not just to an easement fee, but to just compensation based on the full market value of the respondents' land. Citing *Export Processing Zone Authority v. Hon. Ceferino E. Dulay, etc., et al.*,[11] the CA maintained that NAPOCOR "cannot hide behind the mantle of Section 3-A(b) of R.A. 6395 as an excuse of dismissing the claim of appellants" since the determination

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[7] *Supra* note 2.

[8] *Rollo*, p. 44.

[9] G.R. No. 155065, July 28, 2005, 464 SCRA 481.

[10] G.R. No. 150936, August 18, 2004, 437 SCRA 60.

[11] No. 59603, April 29, 1987, 149 SCRA 305.

of just compensation is a judicial function. "No statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings,"[12] the CA added. The dispositive of the assailed *decision* reads:

> In sum, after establishing that NAPOCOR's acquisition of the right-of-way easement over the portion of the appellant's land was a definite taking under the power of eminent domain, NAPOCOR is liable to pay appellants [referring to the respondents herein] just compensation and not only easement fee.
>
> IN LIGHT OF ALL THE FOREGOING, the Order dated February 3, 2004 of the RTC, Br. 40, Tarangnan, Samar is hereby **REVERSED** and **SET ASIDE.** The instant case is hereby **REMANDED** to the RTC, Br. 40 of Tarangnan, Samar for the proper determination of just compensation.[13]

The Petition

The present petition reiterates that by installing transmission lines, NAPOCOR did not expropriate the respondents' land, but merely established a right-of-way easement over it. The petition relies heavily on the lack of transfer of the land's title or ownership. NAPOCOR maintains that since the respondents' claim involved an easement, its charter — a special law — should govern in accordance with Article 635 of the Civil Code.[14] NAPOCOR insists that its agreement with the respondents' predecessor-in-interest and the easement fee that was paid pursuant thereto were authorized by its charter and are, thus, valid and binding. Finally, the petitioner alleges that establishing right-of-way easements over lands traversed by its transmission lines was the "only mode" by which it could "acquire" the properties needed in its power generation and distribution function.

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[12] *Rollo*, pp. 47-48.

[13] *Id.* at 48-49.

[14] Article 635 of the Civil Code reads: "Art. 635. All matters concerning easements established for public or communal use shall be governed by the special laws and regulations relating thereto, and, in the absence thereof, by the provisions of this Title."

It claims that R.A. 8974,[15] specifically its implementing rules, supports this position.

THE COURT'S RULING

We find the petition devoid of merit and AFFIRM the remand of the case to the RTC for the determination of just compensation.

The petitioner pleads nothing new. It essentially posits that its liability is limited to the payment of an easement fee for the land traversed by its transmission lines. It relies heavily on Section 3-A(b) of R.A. 6395 to support this position.

This position has been evaluated and found wanting by this Court in a plethora of cases, including *Manubay*[16] which was correctly cited by the CA in the assailed decision.

In *Manubay*,[17] NAPOCOR sought the reversal of a CA decision that affirmed the payment, as ordered by the RTC in Naga City, of the *full value* of a property traversed by NAPOCOR's transmission lines for its 350 KV Leyte-Luzon HVDC Power Transmission Project. Through then Associate Justice Artemio V. Panganiban, the Court — echoing the 1991 case of *National Power Corporation v. Misericordia Gutierrez, et al.*[18] — formulated the doctrinal issue in *Manubay*,[19] as follows:

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[15] Entitled "*AN ACT TO FACILITATE THE ACQUISITION OF RIGHT-OF-WAY, SITE OR LOCATION FOR NATIONAL GOVERNMENT INFRASTRUCTURE PROJECTS AND FOR OTHER PURPOSES*," approved on November 7, 2000.

[16] *Supra* note 10. In *National Power Corporation v. Purefoods Corporation* (G.R. No. 160725, September 12, 2008, 565 SCRA 17, 31), we held: "The question of just compensation for an easement of right-of-way over a parcel of land that will be traversed by NAPOCOR's transmission lines has already been answered in *National Power Corporation v. Manubay Agro-Industrial Development Corporation.*"

[17] *Supra* note 10.

[18] G.R. No. 60077, January 18, 1991, 193 SCRA 1, 6. The sole issue in *Gutierrez* was formulated in this wise: "Whether petitioner should be made to pay simple easement fee or full compensation for the land traversed by its transmission lines."

[19] *Supra* note 10.

How much just compensation should be paid for an easement of a right of way over a parcel of land that will be traversed by high-powered transmission lines? Should such compensation be a simple easement fee or the full value of the property? This is the question to be answered in this case.[20]

In holding that just compensation should be equivalent to the full value of the land traversed by the transmission lines, we said:

Granting *arguendo* that what petitioner acquired over respondent's property was purely an easement of a right of way, still, we cannot sustain its view that it should pay only an easement fee, and not the full value of the property. The acquisition of such an easement falls within the purview of the power of eminent domain. This conclusion finds support in similar cases in which the Supreme Court sustained the award of just compensation for private property condemned for public use. *Republic v. PLDT* held thus:

"x x x. Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why the said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way."

True, an easement of a right of way transmits no rights except the easement itself, and respondent retains full ownership of the property. The acquisition of such easement is, nevertheless, not *gratis*. As correctly observed by the CA, considering the nature and the effect of the installation power lines, the limitations on the use of the land for an indefinite period would deprive respondent of normal use of the property. For this reason, the latter is entitled to payment of a just compensation, which must be neither more nor less than the monetary equivalent of the land.

Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. 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" and to

[20] *Id.* at 62.

convey thereby the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full and ample.

In eminent domain or expropriation proceedings, the just compensation to which the owner of a condemned property is entitled is generally the market value. Market value is "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 therefore."[21] (Emphasis ours; citations omitted.)

We find it significant that NAPOCOR does not assail the applicability of *Manubay*[22] in the present case. Instead, NAPOCOR criticizes the application of *Gutierrez*[23] which the CA had cited as authority for the doctrine that eminent domain may also "be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession."[24] NAPOCOR assails *Gutierrez*[25] as irrelevant on the ground that the expropriation proceedings were instituted in January 1965, when the NAPOCOR Charter had not been amended with the insertion of Section 3-A(b) in 1976.[26] To NAPOCOR, Section

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[21] *Id.* at 67-68.

[22] *Id.*

[23] *Supra* note 18.

[24] *Rollo*, p. 46.

[25] *Supra* note 18.

[26] The amendment was pursuant to Presidential Decree (P.D.) No. 938, dated May 27, 1976. Section 4 of P.D. No. 938—FURTHER AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED NINETY-FIVE ENTITLED, "AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION," AS AMENDED BY PRESIDENTIAL DECREES NOS. 380, 395 AND 758—provides:

Section 4. A new section shall be inserted to be known as Section 3A of the same Act to read as follows:

"Sec. 3A. In acquiring private property or private property rights through expropriation proceedings where the land or portion thereof will be traversed by the transmission lines, only a right-of-way easement thereon shall be acquired when the principal purpose for which such land is actually devoted will not be impaired, and where the land itself or portion thereof will be needed for the projects or works, such land or portion thereof as necessary shall be acquired.

3-A(b) provides for a "fixed formula in the computation of just compensation in cases of acquisition of easements of right-of-way." Heavily relying on Section 3-A(b), therefore, NAPOCOR argues:

> Absent any pronouncement regarding the effect of Section 3-A (b) of R.A. 6395, as amended, on the computation of just compensation to be paid to landowners affected by the erection of transmission lines, *NPC v. Gutierrez, supra,* should not be deemed controlling in the case at bar.[27]

We do not find NAPOCOR's position persuasive.

The application of *Gutierrez*[28] to the present case is well taken. The facts and issue of both cases are comparable.[29] The

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In determining the just compensation of the property or property sought to be acquired through expropriation proceedings, the same shall—

(a) With respect to the acquired land or portion thereof, not to exceed the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.

(b) **With respect to the acquired right-of-way easement over the land or portion thereof, not to exceed ten percent (10%) of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower.**

In addition to the just compensation for easement of right-of-way, the owner of the land or owner of the improvement, as the case may be, shall be compensated for the improvements actually damaged by the construction and maintenance of the transmission lines, in an amount not exceeding the market value thereof as declared by the owner or administrator, or anyone having legal interest in the property, or such market value as determined by the assessor whichever is lower; Provided, that in cases any buildings, houses and similar structures are actually affected by the right-of-way for the transmission lines, their transfer, if feasible, shall be effected at the expense of the Corporation; Provided, further, that such market value prevailing at the time the Corporation gives notice to the landowner or administrator or anyone having legal interest in the property, to the effect that his land or portion thereof is needed for its projects or works shall be used as basis to determine the just compensation therefor." (Emphasis supplied.)

[27] *Rollo*, p. 30.

[28] *Supra* note 18.

[29] See note 18.

right-of-way easement in the case similarly involved transmission lines traversing privately owned land. It likewise held that the transmission lines not only endangered life and limb, but restricted as well the owner's use of the land traversed. Our pronouncement in *Gutierrez*[30] — that the exercise of the power of eminent domain necessarily includes the imposition of right-of-way easements upon condemned property without loss of title or possession[31] — therefore remains doctrinal and should be applied.[32]

NAPOCOR's protest against the relevancy of *Gutierrez*, heavily relying as it does on the supposed conclusiveness of Section 3-A(b) of R.A. 6395 on just compensation due for properties traversed by transmission lines, has no merit. We have held in numerous cases that Section 3-A(b) is not conclusive upon the courts.[33] In *National Power Corporation v. Maria Bagui, et al.*,[34] we categorically held:

> Moreover, Section 3A-(b) of R.A. No. 6395, as amended, is not binding on the Court. It has been repeatedly emphasized that the determination of just compensation in eminent domain cases is a judicial function and that any valuation for just compensation laid down in the statutes may serve only as a guiding principle or one

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[30] *Id.*

[31] Likewise cited in *National Power Corporation v. Aguirre-Paderanga*, *supra* note 9.

[32] Bernas, Joaquin, *The 1987 Constitution of the Republic of the Philippines A Commentary*, 2009 ed., p. 435.

[33] *National Power Corporation v. Villamor*, G.R. No. 160080, June 19, 2009, 590 SCRA 11, 21, citing *National Power Corporation v. Tiangco*, G.R. No. 170846, 6 February 2007, 514 SCRA 674; *National Power Corporation v. San Pedro*, G.R. No. 170945, 26 September 2006, 503 SCRA 333; *Didipio Earth-Savers' Multi-Purpose Association, Inc. (DESAMA) v. Gozun*, G.R. No. 157882, 30 March 2006, 485 SCRA 586; *National Power Corporation v. Aguirre-Paderanga*, G.R. No. 155065, 28 July 2005, 464 SCRA 481; *National Power Corporation v. Chiong*, 452 Phil. 649 (2003); *Camarines Norte Electric Cooperative, Inc. (CANORECO) v. Court of Appeals*, 398 Phil. 886 (2000); *National Power Corporation v. Gutierrez*, G.R. No. 60077, 18 January 1991, 193 SCRA 1.

[34] G.R. No. 164964, October 17, 2008, 569 SCRA 401, 410.

of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. (Citations omitted.)

The determination of just compensation in expropriation cases is a function addressed to the discretion of the courts, and may not be usurped by any other branch or official of the government.[35] This judicial function has constitutional *raison d'être*; Article III of the 1987 Constitution mandates that no private property shall be taken for public use without payment of just compensation. In *National Power Corporation v. Santa Loro Vda. de Capin, et al.*,[36] we noted with approval the disquisition of the CA in this matter:

> The [herein petitioner] vehemently insists that its Charter [Section 3A (b) of R.A. 6395] obliges it to pay only a maximum of 10% of the market value declared by the owner or administrator or anyone having legal interest in the property, or such market value as determined by the assessor, whichever is lower. To uphold such a contention would not only interfere with a judicial function but would also render as useless the protection guaranteed by our Constitution in Section 9, Article III of our Constitution that no private property shall be taken for public use without payment of just compensation.

The same principle further resolves NAPOCOR's contention that R.A. 8974, specifically its implementing rules, supports NAPOCOR's claim that it is liable to the respondents for an easement fee, not for the full market value of their land. We amply addressed this same contention in *Purefoods*[37] where we held that:

> While Section 3(a) of R.A. No. 6395, as amended, and the implementing rule of R.A. No. 8974 indeed state that only 10% of the market value of the property is due to the owner of the property

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[35] *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, July 23, 2009, 593 SCRA 619, citing *Export Processing Zone Authority v. Dulay*, G.R. No. 59603, April 29, 1987, 149 SCRA 305.

[36] G.R. No. 175176, October 17, 2008, 569 SCRA 648, 668.

[37] *Supra* note 16, at 33-34.

subject to an easement of right-of-way, said rule is not binding on the Court. Well-settled is the rule that the determination of "just compensation" in eminent domain cases is a judicial function. In *Export Processing Zone Authority v. Dulay*, the Court held that any valuation for just compensation laid down in the statutes may serve only as guiding principle or one of the factors in determining just compensation but it may not substitute the court's own judgment as to what amount should be awarded and how to arrive at such amount. The executive department or the legislature may make the initial determinations but when a party claims a violation of the guarantee in the Bill of Rights that private property may not be taken for public use without just compensation, no statute, decree, or executive order can mandate that its own determination shall prevail over the court's findings. Much less can the courts be precluded from looking into the "justness" of the decreed compensation. (Citations omitted.)

That the respondents' predecessor-in-interest did not oppose the installation of transmission lines on their land is irrelevant. In the present petition, NAPOCOR insinuates that Mr. Tuazon's failure to oppose the installation now estops the respondents from their present claim.[38] This insinuation has no legal basis. Mr. Tuazon's failure to oppose cannot have the effect of thwarting the respondents' right to just compensation. In *Rafael C. de Ynchausti v. Manila Electric Railroad & Light Co., et al.*,[39] we ruled:

"The owner of land, who stands by, without objection, and sees a public railroad constructed over it, can not, after the road is completed, or large expenditures have been made thereon upon the faith of his apparent acquiescence, reclaim the land, or enjoin its use by the railroad company. In such case there can only remain to the owner a right of compensation." (*Goodin v. Cin. And Whitewater Canal Co.*, 18 Ohio St., 169.)

"One who permits a railroad company to occupy and use his land and construct its road thereon without remonstrance or complaint, cannot afterwards reclaim it free from the servitude he has permitted

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[38] *Rollo*, pp. 26-27.

[39] 36 Phil. 908, 911-912 (1917).

to be imposed upon it. His acquiescence in the company's taking possession and constructing its works under circumstances which made imperative his resistance, if he ever intended to set up illegality, will be considered a waiver. But while this presumed waiver is a bar to his action to dispossess the company, he is not deprived of his action for damages for the value of the land, or for injuries done him by the construction or operation of the road." (*St. Julien v. Morgan etc., Railroad Co.,* 35 La. Ann., 924.)

In sum, we categorically hold that private land taken for the installation of transmission lines is to be paid the full market value of the land as just compensation. We so ruled in *National Power Corporation v. Benjamin Ong Co*,[40] and we reiterate this ruling today:

> As earlier mentioned, Section 3A of R.A. No. 6395, as amended, substantially provides that properties which will be traversed by transmission lines will only be considered as easements and just compensation for such right of way easement shall not exceed 10 percent of the market value. However, this Court has repeatedly ruled that when petitioner takes private property to construct transmission lines, it is liable to pay the full market value upon proper determination by the courts. (Citations omitted.)

WHEREFORE, premises considered, we *DENY* the present petition for review and *AFFIRM* the assailed decision of the Court of Appeals, promulgated on March 15, 2010, in CA-G.R. CV No. 82480.

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Perez,* and *Sereno, JJ.,* concur.

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[40] G.R. No. 166973, February 10, 2009, 578 SCRA 234, 245.

[*] Designated as Acting Member of the Second Division per Special Order No. 1006 dated June 10, 2011.

FIRST DIVISION

[G.R. No. 176061. July 4, 2011]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BINGKY CAMPOS and DANNY "BOY" ACABO,** *appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; SHIFTS TO THE ACCUSED ONCE HE ADMITS THE COMMISSION OF THE OFFENSE CHARGED BUT RAISES A JUSTIFYING CIRCUMSTANCE AS A DEFENSE. — Well-settled is the rule in criminal cases that the prosecution has the burden of proof to establish the guilt of the accused beyond reasonable doubt. However, once the accused admits the commission of the offense charged but raises a justifying circumstance as a defense, the burden of proof is shifted to him. He cannot rely on the weakness of the evidence for the prosecution for even if it is weak, it cannot be doubted especially after he himself has admitted the killing. This is because a judicial confession constitutes evidence of a high order.

2. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS. — The essential elements of the justifying circumstance of self-defense, which the accused must prove by clear and convincing evidence are: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the accused defending himself. The first element of unlawful aggression is a condition *sine qua non*. There can be no self-defense unless there was unlawful aggression from the person injured or killed by the accused; for otherwise, there is nothing to prevent or repel.

3. ID.; ID.; ID.; UNLAWFUL AGGRESSION; TO BE APPRECIATED, THERE MUST BE AN ACTUAL, SUDDEN AND UNEXPECTED ATTACK, OR IMMINENT DANGER THEREOF, NOT MERELY A THREATENING OR INTIMIDATING ATTITUDE AND THE ACCUSED MUST

PRESENT PROOF OF POSITIVELY STRONG ACT OF REAL AGGRESSION. — For unlawful aggression to be appreciated, there must be an "actual, sudden and unexpected attack, or imminent danger thereof, not merely a threatening or intimidating attitude" and the accused must present proof of positively strong act of real aggression. x x x "[A] threat, even if made with a weapon or the belief that a person was about to be attacked, is not sufficient." An intimidating or threatening attitude is by no means enough.

4. ID.; ID.; ID.; THE NATURE, NUMBER AND LOCATION OF THE WOUNDS SUSTAINED BY THE VICTIM DISPROVE A PLEA OF SELF-DEFENSE IN CASE AT BAR. — [A]s testified to by the attending physician Dr. Yee, Romeo sustained a stab wound causing injuries on his liver, gall bladder, duodenum and the pancreas which resulted to massive blood loss. He eventually died of multiple vital organ failure. Clearly the wound inflicted by Danny on Romeo indicate a determined effort to kill and not merely to defend. As has been repeatedly ruled, the nature, number and location of the wounds sustained by the victim disprove a plea of self-defense.

5. REMEDIAL LAW; EVIDENCE; FLIGHT OF AN ACCUSED DISCLOSES A GUILTY CONSCIENCE.— Danny's actuation in not reporting the incident immediately to the authorities cannot take out his case within the ambit of the Court's jurisprudential doctrine that the flight of an accused discloses a guilty conscience. The justifying circumstance of self-defense may not survive in the face of appellant's flight from the scene of the crime coupled with his failure to promptly inform the authorities about the incident.

6. ID.; ID.; CREDIBILITY OF WITNESSES; THE TESTIMONY OF A WITNESS, GIVING DETAILS OF A STARTLING INCIDENT THAT CANNOT EASILY BE FABRICATED, DESERVES CREDENCE AND FULL PROBATIVE WEIGHT. — [A]ppellants' conviction was principally anchored on the testimony of Lester as an eyewitness. Like the courts below, we too find Lester's testimony consistent, credible and trustworthy. We have reviewed his declaration in court as contained in the pertinent transcript of stenographic notes and we discern nothing therein that casts doubt on his credibility. His testimony is clear, positive in its vital points and full of details substantiating the circumstances of how, where and

when the offense charged happened including the identity of the knife wielder, Danny. It is most unlikely that he could narrate all the details of the crime with clarity and lucidity unless he was personally present at the *situs criminis* before and during the incident. The testimony of a witness, giving details of a startling incident that cannot easily be fabricated, deserves credence and full probative weight for it indicates sincerity and truthfulness in the narration of events.

7. ID.; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, PARTICULARLY WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING UPON THE SUPREME COURT. — Findings of fact of the trial court, particularly when affirmed by the CA, are binding upon this Court. Though there are recognized exceptions to this rule, none is present in this case. We are bound by the trial court's assessment, as affirmed by the appellate court, that the stabbing of Romeo took place in the manner proven by the prosecution, that is, in front of the store of Lester and not elsewhere, at the time the victim was buying cigarette and candies.

8. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS. — There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to ensure the execution of the crime without risk to himself arising from the defense which the offended party might make. To establish treachery, two elements must concur: (a) that at the time of the attack, the victim was not in a position to defend himself; and, (b) that the offender consciously adopted the particular means of attack employed.

9. ID.; CONSPIRACY; DIRECT PROOF IS NOT ESSENTIAL TO PROVE CONSPIRACY. — Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it. "Direct proof is not essential to prove conspiracy [for] it may be deduced [from] the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime."

10. ID.; ID.; ONE WHO PARTICIPATES IN THE MATERIAL EXECUTION OF THE CRIME BY STANDING GUARD

OR LENDING MORAL SUPPORT TO THE ACTUAL PERPETRATION THEREOF IS CRIMINALLY RESPONSIBLE TO THE SAME EXTENT AS THE ACTUAL PERPETRATOR; CASE AT BAR. — [M]ere presence at the scene of the incident, by itself, is not a sufficient ground to hold a person liable as a conspirator. However, conspiracy may be inferred from proof of facts and circumstances which when taken together indicate that they are parts of the scheme to commit the crime. In the present case, Bingky's presence at the scene of the crime at the time of its commission as testified to by prosecution eyewitness Lester was never rebutted. According to Lester, Danny arrived first at the scene of the crime followed by Bingky. During the stabbing incident, Bingky was around three meters away from Danny. Immediately after the incident, both appellants scampered away. To the mind of the Court, Bingky's presence at the scene of the crime at the time of its commission was not just a chance encounter with Danny. His overt act of keeping himself around served no other purpose than to lend moral support by ensuring that no one could give succor to the victim. His presence at the scene has no doubt, encouraged Danny and increased the odds against the victim. One who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator. Moreover, the record is bereft of any hint that Bingky endeavored to avert the stabbing of the victim despite the particular distance between them. Under the circumstances, we can hardly accept that Bingky has nothing to do with the killing. No conclusion can be drawn from the acts of Bingky except that he consented and approved the acts of his co-accused in stabbing the victim. Once conspiracy is established, the act of one is deemed the act of all. It matters not who among the accused actually killed the victim. Thus, the trial court did not err in its ruling that conspiracy existed between appellants in the commission of the crime charged.

11. ID.; MURDER; PENALTY. — Treachery qualifies the killing to murder. Under Article 248 of the Revised Penal Code (RPC), the penalty for murder is *reclusion perpetua* to death. The two penalties being both indivisible and there being no mitigating nor aggravating circumstance to consider, the lesser of the two penalties which is *reclusion perpetua* should be

imposed pursuant to the second paragraph of Article 63 of the RPC. Hence, the penalty of *reclusion perpetua* imposed by the trial court and affirmed by the appellate court is proper.

12. CIVIL LAW; DAMAGES; CIVIL INDEMNITY; THE AMOUNT OF ₱75,000.00 IS GRANTED TO THE HEIRS OF THE VICTIM WITHOUT NEED OF PROOF OTHER THAN THE COMMISSION OF THE CRIME. — The trial court likewise correctly awarded civil indemnity and moral damages to the heirs of the victim. However, in line with prevailing jurisprudence the award of civil indemnity shall be increased from ₱50,000.00 to ₱75,000.00. This amount is granted to the heirs of the victim without need of proof other than the commission of the crime.

13. ID.; ID.; MORAL DAMAGES; AWARDED DESPITE THE ABSENCE OF PROOF OF MENTAL AND EMOTIONAL SUFFERING OF THE VICTIM'S HEIRS. — We retain the award of ₱50,000.00 as moral damages. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs.

14. ID.; ID.; EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR GIVEN THE PRESENCE OF TREACHERY WHICH QUALIFIED THE KILLING TO MURDER. — Exemplary damages should be awarded in accordance with Article 2230 of the Civil Code given the presence of treachery which qualified the killing to murder. We therefore award the amount of ₱30,000.00 as exemplary damages to the heirs of the victim.

15. ID.; ID.; TEMPERATE DAMAGES; MAY BE RECOVERED AS IT CANNOT BE DENIED THAT THE HEIRS OF THE VICTIM SUFFERED PECUNIARY LOSS ALTHOUGH THE EXACT AMOUNT WAS NOT PROVED; CASE AT BAR. — Settled is the rule that only duly receipted expenses can be the basis of actual damages. Dominic Abad, son of the victim testified that the family spent ₱65,000.00 for the hospitalization of the victim, ₱45,000.00 for the coffin and ₱35,000.00 for the wake but failed to present receipts to prove these expenses. However, notwithstanding the absence of receipts to prove actual damages, we find it imperative to award the amount of ₱25,000.00 as temperate damages in lieu of actual damages. Under Article 2224 of the Civil Code, temperate damages may

be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellants.

D E C I S I O N

DEL CASTILLO, *J.*:

We reiterate in this case the time-honored doctrine that although it is a cardinal principle in criminal law that the prosecution has the burden of proving the guilt of the accused, the rule is reversed where the accused admits the commission of the crime and invokes self-defense.

This is an appeal from the September 25, 2006 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR H.C. No. 00241. The CA affirmed *in toto* the April 2, 2004 Decision[2] of the Regional Trial Court (RTC) of Negros Oriental, Branch 37, Dumaguete City finding appellants Bingky Campos (Bingky) and Danny "Boy" Acabo (Danny) guilty beyond reasonable doubt of the crime of murder.

In an Information filed by the Assistant Prosecutor of Dumaguete City, Bingky and Danny were charged with the crime of murder committed as follows:

That on August 19, 2001 at about 8:00 o'clock in the evening at Arellano Street, Poblacion Zamboanguita, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring and confederating together and mutually helping each other, with deliberate intent to kill, armed with a "*plamingco*" — a bladed weapon of which said accused were

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[1] CA *rollo*, pp. 116-122; penned by Associate Justice Agustin S. Dizon and concurred in by Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla.

[2] *Id.* at 17-31; penned by Judge Jenny Lind R. Aldecoa-Delorino.

armed and provided, and [by] means of treachery, and disregard of the respect due the offended party on account of his age, did then and there willfully, unlawfully and feloniously attack, stab and wound ROMEO F. ABAD, 64 years of age, thereby inflicting upon the latter "stab [sic] wound with injury to the liver, gallbladder thru/thru; duodenum thru/thru; pancreas," which cause[d] his death on the following day while undergoing medical treatment at the Holy Child Hospital.

Contrary to Article 248 of the Revised Penal Code, as amended.[3]

Arraigned on September 25, 2001, appellants, assisted by counsel, pleaded not guilty. The pre-trial was deemed terminated on March 25, 2002. Trial on the merits thereafter proceeded.

Version of the Prosecution

A brief summary of the pertinent facts constituting the prosecution's version of the incident was unveiled by the Office of the Solicitor General (OSG) in this manner:

[A]t around [8:00] o'clock in the evening of August 19, 2001, prosecution eyewitness Lester Huck Baldivino (Lester) was tending his *sari-sari* store near his house located at Arellano St., Brgy. Calango, Zamboanguita, Negros Oriental when [the victim] Romeo Abad (Romeo), his maternal uncle, came to buy cigarettes and candies. Lester was about to call it a night and was already preparing to close his store, but Romeo lit up a cigarette and started to converse with him.

Romeo was jesting about Lester's skin rashes, as the latter was applying medicine on his irritated skin. They were in this bantering mood, when Lester, who was facing the highway, suddenly heard footsteps and immediately saw Danny Boy Acabo (Acabo) running towards his uncle's direction, closely followed by Bingky Campos (Campos). Before Lester can utter a word of warning, Danny swiftly stab[bed] Romeo at the lower right side of the latter's abdomen with a "*plamingko*" while Bingky stood nearby. Immediately after stabbing Romeo, Danny and Bingky fled.

Lester was shocked but darted out of his store to apply pressure on Romeo's wound when he heard the latter cry out for help. Lester

[3] Records, p. 1.

told Romeo to hang on and ran inside his house to call his mother and Romeo's son and told them to prepare the car.

Romeo was brought to the Holy Child Hospital where he died.

The medical examination conducted by Dr. Johnny B. Yee (Dr. Yee), the attending physician at the Holy Child Hospital who prepared the Certificate of Death, revealed that Romeo sustained a stab[bed] wound that could have been inflicted by a sharp and pointed long instrument. The weapon hit him at the right upper quadrant of the abdomen, penetrating and causing injury to the liver, with through and through laceration of the gall bladder and the duodenum, and transecting the whole length of the pancreas. Dr. Yee further testified that the injury to the pancreas caused the massive blood loss which [made] Romeo to suffer hypovolemic shock [resulting to] cardio-pulmonary arrest [and, eventually, his] death.[4]

Version of the Defense

For the defense, the following is their own version of the incident as narrated in their Brief:

On August 19, 2001 while on their way to the house of their uncle, Danny and Bingky met four men who mauled Bingky. When Bingky was able to run away, they approached Danny and kicked his buttocks. Danny pulled out a knife and thrust it towards one of the men. Danny then ran away to escape.[5]

Bingky corroborated the testimony of Danny that four men approached him (Bingky) and mauled him. He does not know who these persons were.[6]

Ruling of the Regional Trial Court

On April 2, 2004, after evaluating the conflicting evidence before it, the RTC meted out a judgment of conviction and sentenced both Bingky and Danny to *reclusion perpetua* and ordered them to indemnify jointly and severally the heirs of

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[4] CA *rollo*, pp. 86-88.

[5] *Id.* at 56.

[6] *Id.*

Romeo the sum of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages plus cost.[7]

Appellants appealed to this Court in view of the penalty imposed on them. On September 15, 2004, this Court accepted the appeal and notified the parties to file briefs.[8] On March 7, 2005,[9] the Court transferred the case to the CA in conformity with the Decision in *People v. Mateo*.[10]

Ruling of the Court of Appeals

The CA found no error in the appreciation of the evidence and applicable law by the trial court. On September 25, 2006, the appellate court, in rendering its assailed Decision, dispositively ruled:

> WHEREFORE, premises considered, Judgment is hereby rendered affirming the Decision of the trial court *in toto*.
>
> SO ORDERED.[11]

Hence, this appeal.

On May 3, 2007[12] and May 7, 2007,[13] appellants and appellee People of the Philippines, through the Office of the Solicitor General (OSG), respectively, filed similar manifestation that they are no longer filing their supplemental briefs.

Appellants pray for the reversal of their conviction alleging that the prosecution failed to prove their guilt beyond reasonable

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[7] *Id.* at 31.

[8] *Id.* at 34.

[9] *Id.* at 44.

[10] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640. In this case, the Court provided a review by the Court of Appeals of cases where the penalty of *reclusion perpetua* or life imprisonment is imposed before same is elevated to the Supreme Court.

[11] CA *rollo*, p. 122.

[12] *Rollo*, pp. 11-12.

[13] *Id.* at 13-15.

doubt. They claim that the stabbing of the victim was done in self-defense. They take exception to the finding of the trial court regarding the presence of conspiracy asserting that the mere presence of Bingky at the scene of the crime does not prove the existence of conspiracy.

For the appellee, the OSG argues that Danny failed to prove his plea of self-defense; that conspiracy attended the killing of the victim and that appellants' guilt was proven beyond reasonable doubt. Appellee thus prays for the affirmance of the judgment of conviction with modification as to the award of civil indemnities.

Our Ruling

The appeal lacks merit.

Well-settled is the rule in criminal cases that the prosecution has the burden of proof to establish the guilt of the accused beyond reasonable doubt.[14] However, once the accused admits the commission of the offense charged but raises a justifying circumstance as a defense, the burden of proof is shifted to him. He cannot rely on the weakness of the evidence for the prosecution for even if it is weak, it cannot be doubted especially after he himself has admitted the killing.[15] This is because a judicial confession constitutes evidence of a high order.

Danny categorically admits that he stabbed Romeo. However, he boldly claims that he did it in self defense. He avers that on that fateful night of August 19, 2001, he and Bingky were attacked along the way home by four unknown persons for no apparent reason. He observed that one of the men was pulling an object from his waistband which he thought was a bladed weapon so he drew his own knife and thrust it at the man rushing at him, hitting the latter on the right side of his body. His reaction, he asserts, was defensive arising from a prior act of aggression and provocation by the victim and his companions.

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[14] *Boac v. People*, G.R. No. 180597, November 7, 2008, 570 SCRA 533, 548.

[15] *Palaganas v. People*, G.R. No. 165483, September 12, 2006, 501 SCRA 533, 553-554.

The essential elements of the justifying circumstance of self-defense, which the accused must prove by clear and convincing evidence are: (a) unlawful aggression on the part of the victim; (b) reasonable necessity of the means employed by the accused to prevent or repel the unlawful aggression; and (c) lack of sufficient provocation on the part of the accused defending himself.[16] The first element of unlawful aggression is a condition *sine qua non.* There can be no self-defense unless there was unlawful aggression from the person injured or killed by the accused; for otherwise, there is nothing to prevent or repel.

In the present case, Danny's claim of self-defense is belied by his own testimony:

Q Now after they attacked Bingky Campos what did they do?
A They were not able to hit again Bingky because Bingky ran away.

Q How about you? What did they do to you?
A I was held by the other person when he approached me because Bingky was no longer there.

Q And who was that person who held you?
A I do not know him.

Q How about now, do you know his name?
A What I know only was Jaime and Iko.

Q Who [between] the two, Jaime and Iko [took] hold of you?
A Jaime and Iko were not able to hold me.

Q Was there an attempt by Jaime and Iko to maul you also?
A Yes.

Q What did they do?
A They kicked my left butt and the other person held me.

Q Then what did you do?
A I pulled a knife from my waist.

Q Who [between] the two kicked you at your butt and who was the person who took hold of you?

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[16] *Mahawan v. People*, G.R. No. 176609, December 18, 2008, 574 SCRA 737, 746.

A It was Iko who kicked my buttocks but the other person who held me, I do not know his name.

Q Now what happened when you drew you[r] knife?
A The two persons who attempted to attack me, when I pulled a knife, I thrust the knife to the person who rushed at me.

Q Did you hit that person?
A Yes, he was hit.

Q Where was he hit?
A At the side.

Court Interpreter:
The witness is touching his lower right side.

Atty. Vailoces:
Q And what were the other companions doing at that time?

Witness:
A After thrusting the knife to the person, I ran away and the three (3) ran after me.[17]

As can be gleaned from the foregoing narration, there is no mention at all that Romeo was among the four persons who allegedly attacked Danny and Bingky. Likewise, there is nothing in the narration which evinces unlawful aggression from Romeo. Danny's testimony shows that there was only an attempt, not by Romeo but by Jaime and Iko, to attack him. Following his version, Danny then became the aggressor and not the victim. Even if the version of Danny is given a semblance of truth, that there was an attempt to hurt him, though intimidating, the same cannot be said to pose danger to his life and limb. This conclusion was drawn from the fact that no bladed weapon was found at the alleged scene of the crime and nobody testified about it. For unlawful aggression to be appreciated, there must be an "actual, sudden and unexpected attack, or imminent danger thereof, not merely a threatening or intimidating attitude"[18] and the accused must present proof of positively strong act of real aggression. For this reason, Danny's observation that one of

[17] TSN, November 11, 2002, pp. 10-11.

[18] *People v. Rubiso*, 447 Phil. 374, 381 (2003).

the men was pulling an object from his waist is not a convincing proof of unlawful aggression. "[A] threat, even if made with a weapon or the belief that a person was about to be attacked, is not sufficient."[19] An intimidating or threatening attitude is by no means enough. In this case, other than the self-serving allegation of Danny, there is no evidence sufficiently clear and convincing that the victim indeed attacked him. The prosecution's rebuttal witnesses Jaime Maquiling and Francisco Austero[20] who admittedly were among those whom Danny and Bingky had an encounter with on the night of August 19, 2001, never said in their testimonies that Romeo attacked Danny and a bladed weapon was used. These witnesses were categorical that Romeo was not with them during the incident. This testimonial evidence was not refuted by the defense. Even Bingky who claimed to be a friend of Romeo[21] was not able to identify the latter as one of those present at the time. Candid enough, Bingky declared that it was only a certain Ago and Jaime who confronted Danny.[22] Resultantly, Danny failed to discharge his burden of proving unlawful aggression, the most indispensable element of self-defense. Where "no unlawful aggression is proved, no self-defense may be successfully pleaded."[23]

Moreover, as testified to by the attending physician Dr. Yee, Romeo sustained a stab wound causing injuries on his liver, gall bladder, duodenum and the pancreas which resulted to massive blood loss.[24] He eventually died of multiple vital organ failure. Clearly the wound inflicted by Danny on Romeo indicate a determined effort to kill and not merely to defend.[25] As has

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[19] *Id.*

[20] They are the Jaime and Iko referred to by Danny in his abovequoted testimony; see TSN, April 1, 2003.

[21] TSN, December 2, 2002, p. 13.

[22] *Id.* at 12.

[23] *People v. Abesamis*, G.R. No. 140985, August 28, 2007, 531 SCRA 300, 311.

[24] TSN, August 13, 2002, p. 13.

[25] *People v. Pateo*, G.R. No. 156786, June 3, 2004, 430 SCRA 609, 617.

been repeatedly ruled, the nature, number and location of the wounds sustained by the victim disprove a plea of self-defense.[26]

Furthermore, Danny's actuation in not reporting the incident immediately to the authorities cannot take out his case within the ambit of the Court's jurisprudential doctrine that the flight of an accused discloses a guilty conscience. The justifying circumstance of self-defense may not survive in the face of appellant's flight from the scene of the crime coupled with his failure to promptly inform the authorities about the incident.[27]

Indeed, appellants' conviction was principally anchored on the testimony of Lester as an eyewitness. Like the courts below, we too find Lester's testimony consistent, credible and trustworthy. We have reviewed his declaration in court as contained in the pertinent transcript of stenographic notes and we discern nothing therein that casts doubt on his credibility. His testimony is clear, positive in its vital points and full of details substantiating the circumstances of how, where and when the offense charged happened including the identity of the knife wielder, Danny. It is most unlikely that he could narrate all the details of the crime with clarity and lucidity unless he was personally present at the *situs criminis* before and during the incident. The testimony of a witness, giving details of a startling incident that cannot easily be fabricated, deserves credence and full probative weight for it indicates sincerity and truthfulness in the narration of events.[28] Findings of fact of the trial court, particularly when affirmed by the CA, are binding upon this Court.[29] Though there are recognized exceptions to this rule, none is present in this case. We are bound by the trial court's assessment, as affirmed by the appellate court, that the stabbing of Romeo took place in the manner proven by the prosecution,

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[26] *Id.*

[27] *David, Jr. v. People*, G.R. No. 136037, August 13, 2008, 562 SCRA 22, 35.

[28] *People v. Clariño*, 414 Phil. 358, 374 (2001).

[29] *Alcantara v. Roble de Templa*, G.R. No. 160918, April 16, 2009, 585 SCRA 254, 266.

that is, in front of the store of Lester and not elsewhere, at the time the victim was buying cigarette and candies.

Treachery attended the killing of the victim

The trial court, in convicting appellants of murder, ruled that the killing was qualified by treachery.

We agree.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specifically to ensure the execution of the crime without risk to himself arising from the defense which the offended party might make.[30] To establish treachery, two elements must concur: (a) that at the time of the attack, the victim was not in a position to defend himself; and, (b) that the offender consciously adopted the particular means of attack employed.[31]

In this case, it is at once evident that Danny's attack on the victim was sudden and deliberate as testified by eyewitness Lester. The attack was unexpected and without the slightest provocation on the part of the unarmed Romeo considering that he was casually talking to Lester after buying something from the store with no inkling that an attack was forthcoming. The attack was executed in a manner that Romeo was rendered defenseless and unable to retaliate. The severity of the lone stab wound forestalled any possibility of resisting the attack. Danny without doubt took advantage of this situation. As correctly held by the trial court, the act of Danny in positioning himself in a place where Romeo could not see him and then suddenly and deliberately inflicting a fatal wound are clear indications that he employed means and methods which tended directly and specifically to ensure the successful execution of the offense.[32]

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[30] *People v. Dela Cruz*, G.R. No. 174371, December 11, 2008, 573 SCRA 708, 721-722.

[31] *Id.*

[32] RTC Decision, CA *rollo*, p. 13.

Conspiracy adequately established

Notably, a relevant portion of the appellants' brief was focused on the discussion of the conspiracy angle in the commission of the crime. The defense challenges the trial court's finding of conspiracy, arguing that Bingky's mere presence at the scene of the crime does not prove the existence of conspiracy.

Appellants' argument is untenable.

Conspiracy is said to exist where two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[33] "Direct proof is not essential to prove conspiracy [for] it may be deduced [from] the acts of the accused before, during and after the commission of the crime charged, from which it may be indicated that there is a common purpose to commit the crime."[34]

Indeed, mere presence at the scene of the incident, by itself, is not a sufficient ground to hold a person liable as a conspirator. However, conspiracy may be inferred from proof of facts and circumstances which when taken together indicate that they are parts of the scheme to commit the crime. In the present case, Bingky's presence at the scene of the crime at the time of its commission as testified to by prosecution eyewitness Lester was never rebutted. According to Lester, Danny arrived first at the scene of the crime followed by Bingky. During the stabbing incident, Bingky was around three meters away from Danny. Immediately after the incident, both appellants scampered away.[35] To the mind of the Court, Bingky's presence at the scene of the crime at the time of its commission was not just a chance encounter with Danny. His overt act of keeping himself around served no other purpose than to lend moral support by ensuring that no one could give succor to the victim. His presence at the scene has no doubt, encouraged Danny and increased the odds against

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[33] *People v. Pagalasan*, 452 Phil. 341, 363 (2003).

[34] *People v. Martin*, G.R. No. 177571, September 29, 2008, 567 SCRA 42, 51.

[35] TSN, July 1, 2002, p. 9.

the victim. One who participates in the material execution of the crime by standing guard or lending moral support to the actual perpetration thereof is criminally responsible to the same extent as the actual perpetrator.[36] Moreover, the record is bereft of any hint that Bingky endeavored to avert the stabbing of the victim despite the particular distance between them. Under the circumstances, we can hardly accept that Bingky has nothing to do with the killing. No conclusion can be drawn from the acts of Bingky except that he consented and approved the acts of his co-accused in stabbing the victim. Once conspiracy is established, the act of one is deemed the act of all. It matters not who among the accused actually killed the victim. Thus, the trial court did not err in its ruling that conspiracy existed between appellants in the commission of the crime charged.

The Proper Penalty

Treachery qualifies the killing to murder.[37] Under Article 248 of the Revised Penal Code (RPC), the penalty for murder is *reclusion perpetua* to death. The two penalties being both indivisible and there being no mitigating nor aggravating circumstance to consider, the lesser of the two penalties which is *reclusion perpetua* should be imposed pursuant to the second paragraph of Article 63[38] of the RPC. Hence the penalty of *reclusion perpetua* imposed by the trial court and affirmed by the appellate court is proper.

As to Damages

The trial court likewise correctly awarded civil indemnity and moral damages to the heirs of the victim. However, in line

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[36] *People v. Sicad*, 439 Phil. 610, 626 (2002).

[37] *People v. Ramos*, 471 Phil. 115, 125 (2004).

[38] ART. 63 — *Rules for the application of indivisible penalties*. — x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties the following rules shall be observed in the application thereof.

x x x x x x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

x x x x x x x x x

with prevailing jurisprudence the award of civil indemnity shall be increased from ₱50,000.00 to ₱75,000.00. This amount is granted to the heirs of the victim without need of proof other than the commission of the crime. We retain the award of ₱50,000.00 as moral damages. Moral damages are awarded despite the absence of proof of mental and emotional suffering of the victim's heirs.

Significantly, both lower courts failed to award exemplary and actual damages to the heirs of the victim. Exemplary damages should be awarded in accordance with Article 2230[39] of the Civil Code given the presence of treachery which qualified the killing to murder. We therefore award the amount of ₱30,000.00 as exemplary damages to the heirs of the victim.[40]

Settled is the rule that only duly receipted expenses can be the basis of actual damages. Dominic Abad, son of the victim testified that the family spent ₱65,000.00 for the hospitalization of the victim, ₱45,000.00 for the coffin and ₱35,000.00 for the wake but failed to present receipts to prove these expenses.[41] However, notwithstanding the absence of receipts to prove actual damages, we find it imperative to award the amount of ₱25,000.00 as temperate damages in lieu of actual damages. Under Article 2224 of the Civil Code, temperate damages may be recovered as it cannot be denied that the heirs of the victim suffered pecuniary loss although the exact amount was not proved.[42]

In addition, and in conformity with current policy, we also impose on all the monetary awards for damages an interest at the legal rate of 6% from date of finality of this Decision until fully paid.

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[39] ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

[40] *People v. Asis*, G.R. No. 177573, July 7, 2010, 624 SCRA 509, 531.

[41] TSN, October 14, 2002, p. 7.

[42] *People v. Surongon*, G.R. No. 173478, July 12, 2007, 527 SCRA 577, 588.

WHEREFORE, the appealed judgment is *AFFIRMED with the MODIFICATIONS* that appellants Bingky Campos and Danny "Boy" Acabo are ordered to jointly and severally pay the heirs of the victim Romeo Abad, the amount of ₱75,000.00 as civil indemnity; ₱30,000.00 as exemplary damages; ₱25,000.00 as temperate damages, all in addition to the ₱50,000.00 moral damages which is retained, as well as interest on all these damages assessed at the legal rate of 6% from date of finality of this Decision until fully paid.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, Bersamin, and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 181035. July 4, 2011]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOEL DION,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; COMPLAINT OR INFORMATION; DATE OF COMMISSION OF THE OFFENSE; THE REQUIREMENT OF INDICATING IN THE COMPLAINT OR INFORMATION THE DATE OF THE COMMISSION OF THE OFFENSE APPLIES ONLY WHEN SUCH DATE IS A MATERIAL INGREDIENT OF THE OFFENSE. — [T]he requirement of indicating in the complaint or information the date of the commission of the offense applies only when such date is a material ingredient of the offense. In *People v. Espejon*, we elucidated on this rule, to wit: "An information is valid as long as it distinctly states the elements of the offense

and the acts or omissions constitutive thereof. The exact date of the commission of a crime is not an essential element of it. Thus, in a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The failure to specify the exact date or time when it was committed does not *ipso facto* make the information defective on its face." In *People v. Cantomayor*, we explained when the time of the commission of the crime becomes relevant: "[T]he time of the commission of the crime assumes importance only when it creates serious doubt as to the commission of the rape or the sufficiency of the evidence for purposes of conviction. The date of the commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of the commission of the crime." Applying this principle in a statutory rape case, we held: x x x "**In statutory rape, time is not an essential element. What is important is that the information alleges that the victim was a minor under twelve years of age and that the accused had carnal knowledge of her, even if the accused did not use force or intimidation on her or deprived her of reason**."

2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, WHEN THE VICTIM'S TESTIMONY PASSES THE TEST OF CREDIBILITY, THE ACCUSED MAY BE CONVICTED SOLELY ON THE BASIS THEREOF. — Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof.

3. ID.; ID.; ID.; NOT IMPAIRED BY INCONSISTENCIES IN THE VICTIM'S TESTIMONY REFERRING TO TRIVIAL MATTERS THAT DO NOT ALTER THE ESSENTIAL FACT OF THE COMMISSION OF RAPE. — Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. The trial court's

assessment of the witnesses' credibility is given great weight and is even conclusive and binding.

4. ID.; ID.; ALIBI; REQUISITES. — This Court has time and again held that alibi is one of the weakest defenses, not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check out or rebut. In *People v. Del Ayre*, we held that the requisites for the defense are: (a) his presence at another place at the time of the perpetration of the offense; and (b) the physical impossibility of his presence at the scene of the crime.

5. ID.; ID.; MEDICO-LEGAL CERTIFICATE; MERELY CORROBORATIVE IN CHARACTER WHICH COULD BE DISPENSED WITH ACCORDINGLY. — This Court has made several pronouncements on the relevance of a medico-legal certificate. It is merely corroborative in character, which could be dispensed with accordingly.

6. ID.; ID.; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE TESTIMONIES OF CHILD-VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT. — Well-settled is the doctrine that testimonies of child-victims are given full weight and credit. When a woman or a girl-child says that she had been raped, she says, in effect, all that is necessary to prove that rape was really committed.

7. CRIMINAL LAW; RAPE; PENALTY IN CASE AT BAR. — As the rapes were committed on AAA, a minor below 12 years old, as proven by both testimonial and documentary evidence, without any aggravating or mitigating circumstance, the Court of Appeals was correct in affirming the RTC's imposition upon Dion of the penalty of *reclusion perpetua*, since it found Dion guilty beyond reasonable doubt of two counts of **simple rape**, as defined under Article 266-A, paragraph 1 of the Revised Penal Code.

8. CIVIL LAW; DAMAGES; CIVIL INDEMNITY *EX DELICTO* AND MORAL DAMAGES; AWARDED IN CASE AT BAR. — Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape. Moral damages are automatically awarded without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

The accused-appellant challenges in this appeal the July 25, 2007 **Decision**[1] promulgated by the Court of Appeals in **CA-G.R. CR-H.C. No. 01161**, which affirmed *in toto* the judgment[2] of conviction for two counts of Rape rendered against him by Branch 53 of the Pangasinan Regional Trial Court (RTC) in **Criminal Case Nos. 4354-R and 4355-R**.

Accused-appellant Noel Dion *y* Duque (Dion) was charged with two counts of rape in two separate criminal complaints filed directly before the RTC on June 19, 2001, which read:

Criminal Case No. 4354-R:

The undersigned complainant under oath accuses NOEL DION *y* DUQUE *Alias* KIKO of Brgy Cabalaoangan Sur, Rosales, Pangasinan of the crime of Rape, committed as follows;

That on June 16, 2001 at around 10:00 o'clock in the evening in XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threats (*sic*) and intimidation, did then and there willfully, unlawfully, and felon[i]ously have carnal knowledge with the complainant, a minor, 10 years of age against her will. (Medico-legal Certificate is hereto attached)[3]

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[1] *Rollo*, pp. 2-18; penned by Associate Justice Normandie B. Pizarro with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring.

[2] CA *rollo*, pp. 22-43; penned by Judge Teodorico Alfonso P. Bauzon.

[3] Records, Vol. I, p. 1.

Criminal Case No. 4355-R:

The undersigned complainant under oath accuses NOEL DION *y* DUQUE *Alias* KIKO of Brgy Cabalaoangan Sur, Rosales, Pangasinan of the crime of Rape, committed as follows;

That sometime [i]n April 2001 at around 3:00 o'clock in the afternoon in XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, by means of force, threats (*sic*) and intimidation, did then and there willfully, unlawfully, and felon[i]ously have carnal knowledge with the complainant, a minor, 10 years of age against her will. (Medico-legal Certificate is hereto attached)[4]

The arraignment[5] for both cases was held on September 12, 2001, after the Office of the Assistant Provincial Prosecutor, which conducted the preliminary investigation requested by Dion,[6] found probable cause to hold him for trial.[7] On the same day, the RTC issued an Order[8] to reflect that Dion entered a plea of not guilty to the two charges, and to set the schedule of the pre-trial conference.

After the completion of the pre-trial conference on March 6, 2002,[9] joint trial on the merits followed.

AAA,[10] the private complainant, was the first witness for the prosecution. She testified that it was sometime in April 2001 when she was first raped by Dion, whom she knew as a distant relative. She identified Dion in open court. AAA alleged that at around three o'clock in the afternoon, after she had finished

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[4] Records, Vol. II, p. 1.

[5] Records, Vol. I, p. 23.

[6] *Id.* at 9.

[7] *Id.* at 12 and 14.

[8] *Id.* at 22.

[9] *Id.* at 40.

[10] Under Republic Act No. 9262 also known as "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim and those of her immediate family members are withheld and fictitious initials are instead used to protect the victim's privacy.

throwing garbage at the "*bakir*" or garbage pit[11] located some 300 meters from the back of their house, Dion came out from behind some trees, beckoning her to approach him. Instead of going to Dion, AAA started to run to their house, but she tripped and fell to the ground. This allowed Dion to catch up to her, and he then pulled her toward an area covered with tall grasses. After threatening AAA that he will cut her tongue and neck if she shouted, Dion forced her on her back and removed her undergarments. Dion then removed his own short pants and briefs then climbed on top of her. AAA described how Dion made the "push and pull movement" after he inserted his penis into her vagina. AAA claimed that when Dion had finished, he stood up and again warned her not to report the incident to anyone, otherwise he will cut her neck or tongue.[12]

Regarding the second incident of rape, AAA averred that at around ten o'clock in the evening of June 16, 2001, while she was getting water from their kitchen, she heard knocking at the door. AAA inquired who it was but received no response. She testified that all of a sudden, Dion was already inside their house, and he was calling her. Once again, Dion gave the same threats to AAA before raping her as he did previously, in April 2001. Dion had just finished his deed and was about to go home when AAA's uncle, CCC, arrived. Following the sound he had heard, CCC found Dion hiding in a corner in the kitchen. CCC immediately collared Dion and woke up BBB, AAA's grandmother. BBB thereafter called Dion's father and their *Barangay* Chairman.[13]

The prosecution introduced in evidence the Medico-Legal Certificate[14] prepared by Dr. Mary Ann Valdez Romero-Fernandez, who conducted the physical examination on AAA on June 17, 2001. Dr. Romero-Fernandez's findings, as stated in the certificate dated June 18, 2001, are as follows:

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[11] TSN, May 22, 2002, p. 7.

[12] TSN, April 24, 2002, pp. 2-9.

[13] TSN, April 24, 2002, pp. 9-13.

[14] Records, Vol. I, p. 6.

.x.x DOI= April 2001/June 16, 2001 TOI= 3P.M. / 10P.M.
POI= 1. Backyard 2. Same as address
NOI= alleged sexual abuse
Physical findings : (+) healed, superficial, lacerated hymenal wounds at 4,6 & 9 o'clock positions
Admits 1 finger; Rectal examination : no skin tag, no fissures tight sphinteric tone, cervix closed, uterus=small adnexae =(-)
Hymenal lacerations at 4,6, & 9 o'clock positions G_o
Cervicovaginal smear for presence of spermatozoa
Result: Negative for spermatozoa .x.x

Noticeable in the Medico-Legal Certificate were the findings that the hymenal lacerations on AAA were not only healed but also only superficial. Moreover, the cervicovaginal smear done on AAA to test for presence of spermatozoa yielded a negative result.

Asked to restate her findings in non-technical language, Dr. Romero-Fernandez explained that the lacerations were "superficial" as they had "not gone through beyond more than half of the width of the hymen."[15] Likewise, they were "healed" since they appear to have occurred more than 24 hours before the examination.[16] The doctor elaborated that a number of factors could cause lacerations to the hymen,[17] but admitted that in AAA's case, she "could not surmise or definitely say that those lacerations could have been caused by sexual abuse."[18]

The prosecution next presented the maternal grandmother and guardian of AAA, BBB. BBB attested that AAA is the child of her daughter, who died when AAA was only three years old. Since then, she had been taking care of AAA, whom she confirmed to be a minor at the time of the rape incidents.[19]

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[15] TSN, May 5, 2003, p. 8.

[16] *Id.*

[17] *Id.* at 10.

[18] *Id.* at 13.

[19] TSN, May 26, 2003, pp. 3-5.

After the prosecution rested its case, the defense presented the following as witnesses: Clarita Dion, Allan Ramirez, Leonardo Neris, and Pepito Dion, Sr. Although they had all testified before Dion himself took the stand, their testimonies were given to support and corroborate Dion's own account of the events.

Negating AAA's accusations, Dion denied that he had raped AAA, whom he claimed he had never talked to. He alleged that he could not have raped AAA in April 2001 because he was in *Barangay* Dusoc, Bayambang, Pangasinan the entire month, working as a "*bata-bataan*"[20] (boy) in the carnival which was situated there at that time. [21]

Zeroing in on the June 16, 2001 rape, Dion averred that he was on his way to a dance in the *barangay* when AAA called him to enter her house. He obliged, but upon entering her house, he found AAA's uncle, CCC, who, for no reason, accused him of raping AAA.[22] Dion's father, Pepito Dion, Sr., later arrived with their *Barangay* Chairman, Leonardo Neris, to look into what happened. Dion said his father "mauled" him when he said that he didn't do it. Afterwards, he was brought to the municipal hall where he was "incarcerated."[23]

Allan Ramirez, also a resident of Rosales, Pangasinan, was presented to corroborate Dion's alibi that he was at the carnival in another *barangay* in April of 2001. Ramirez disclosed that he had come to know Dion in the carnival where they both worked. He claimed that in April 2001, both he and Dion were working in the carnival, which at that time was located in *Barangay* Dusoc, Bayambang. To prove this, he presented a certification[24] from the Punong *Barangay* of Dusoc, Bayambang, that the carnival owned by Mr. Jose Miguel was in their *barangay* from March 28 to April 30, 2001. However, Ramirez also mentioned

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[20] TSN, August 2, 2004, p. 9.

[21] TSN, June 7, 2004, pp. 3-4.

[22] *Id.* at 7-9.

[23] TSN, August 2, 2004, pp. 5-7.

[24] Records, Vol. I, p. 189.

that on April 1, 2001, the carnival was transferred to Rosales, so he and Dion also travelled to Rosales, but they went back to Bayambang in the afternoon.[25]

During her testimony, Dion's mother, Clarita Dion, noted the negative results of the medical examination done on AAA, and concluded that her son was telling her the truth when he denied raping AAA. Mrs. Dion averred that Dion was working as a supervisor or the person in charge of betting at a carnival in *Barangay* Dusoc, Bayambang, Pangasinan, from April 30 to May 16, 2001, and since Dion did not know how to travel by himself, he could not have gone back to Rosales to rape AAA. Moreover, she alleged that on June 16, 2001, her son was with her the entire day until the evening when he got dressed up to go to the *barangay* dancing hall for an event. She claimed that she went with Dion to the dancing hall to watch the celebration, although she went home earlier. Dion supposedly went home at eleven o'clock in the evening and he told her that the *Barangay* Chairman accused him of raping AAA. Mrs. Dion admitted that AAA was not only her neighbor, but also her husband's relative. She, however, alleged that while Dion was not fond of women, AAA was "fond of playing with men."[26]

The defense also offered in evidence the testimony of *Barangay* Cabalaoangan Sur's Chairman in 2001, Leonardo Neris. Neris testified that he only learned of both incidents of rape in the evening of June 16, 2001. He was at the *barangay* hall for the wedding celebration of a *barangay* mate when at around ten o'clock in the evening, he was informed that BBB's granddaughter was raped. Together with Pepito Dion, Sr. (Pepito) who was then the Chief *Barangay Tanod*, he went to BBB's house to investigate on the matter. He claimed that he did not see AAA that night because BBB said AAA was nervous and did not want to talk to anyone. Neris claimed that it was only when he got to BBB's house that he discovered that it was Pepito's son who was being accused. He opined that Dion was mentally

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[25] TSN, May 24, 2004, pp. 3-7.

[26] TSN, January 21, 2004, pp. 3-11.

retarded and in fact, in their town, Dion was nicknamed "Kiko," the term they use to call "abnormal people." Neris also stated that Dion was at AAA's house because he was supposed to go to the dancing hall with his uncle who lived there.[27]

Dion's father, Pepito Dion, Sr., averred that while his 25-year-old son might have a low I.Q., he is not a retardate. He affirmed that Dion was at the carnival in Bayambang, Pangasinan for the month of April 2001. Pepito alleged that since his son could not travel on his own, it was only on April 28, 2001 that he returned to Rosales, with his employer. Pepito claimed that from April 29 to 30, 2001, Dion was at home, as Dion helped him in filling the foundation of their house. Meanwhile, on June 16, 2001, as Chief *Tanod* tasked to maintain peace and order, he was at their *barangay* hall for a wedding event when he was called by their *Barangay* Chairman to respond to a report. It was around eight o'clock in the evening when he accompanied *Barangay* Chairman Neris to BBB's house to investigate BBB's claim that her granddaughter was raped. When Pepito arrived at BBB's house, he saw that it was his son Dion who was being accused, and when he asked Dion if he did it, Dion answered "No *Tatay*." Pepito also stated that Dion told him that he was there because AAA wanted him to accompany her to the dancing hall.[28]

On December 21, 2004, the RTC rendered its Decision, finding Dion guilty beyond reasonable doubt of two counts of statutory rape:

> WHEREFORE, premises considered, the Court hereby renders judgment as follows:
>
> 1. In Criminal Case No. 4354-R, the Court finds the accused Guilty beyond reasonable doubt of the crime of Rape defined and penalized under Article 266-A, par. 1(d) and penalized under Article 266-B par. 1, and hereby imposes upon him the penalty of *Reclusion Perpetua*. He is also ordered to pay the victim [AAA] the amount of (a) ₱50,000.00 as moral

[27] TSN, February 16, 2004, pp. 3-15.

[28] TSN, April 28, 2004, pp. 3-9.

damages and (b) ₱50,000.00 as indemnity or compensatory damages;

2. In Criminal Case No. 4355-R, the Court finds the accused Noel Dion Guilty beyond reasonable doubt of the crime of Rape defined under Article 266-A, par. 1(d) and penalized under Article 266-B par. 1. He is hereby sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay the victim [AAA] the amount of (a) ₱50,000.00 as moral damages and (b) ₱50,000.00 as indemnity or compensatory damages.[29]

The RTC held that it had no reason to disbelieve the testimony of AAA because "she was clear, direct, firm, and forthright when she testified"[30] about her ordeals. On the other hand, the RTC found Dion's defense of alibi in relation to the April 2001 rape unworthy for not having met the requisites for such a defense to be acceptable. The RTC pronounced that the defense was not able to show that it was physically impossible for Dion to be at the crime scene during the whole month of April 2001. The RTC gave no probative value to the certification the *barangay* submitted since the person who issued it was not presented in court. It also considered Ramirez's admission that the carnival was transferred to Rosales on April 1, 2001, as having discredited Dion's claim that he was in Bayambang the entire month of April of that year. The RTC rejected the defense's claim that Dion was mentally deficient because his very job in the carnival they all claimed he worked in proved that Dion was "endowed x x x with common sense, x x x good memory and accurate mathematical ability, which are all indicia of normal average, if not high intelligence."[31]

The RTC also discounted Dion's denial of the June 2001 rape. The RTC found that Dion was not able to properly explain what he was doing at AAA's house at a very late hour and why he would be accused of raping AAA, especially since he had claimed that he neither liked her nor fought with her.

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[29] CA *rollo*, pp. 42-43.

[30] *Id.* at 30.

[31] *Id.* at 38.

Dion elevated the RTC decision to the Court of Appeals, attacking the second information as defective and AAA's testimony as incredible and full of inconsistencies.

In its **Decision** dated July 25, 2007 in CA-G.R. CR.-H.C. No. 01161, the Court of Appeals affirmed *in toto* the RTC decision. The dispositive portion of the Court of Appeals Decision reads:

> WHEREFORE, the ***Decision*** of the Regional Trial Court of Rosales, Pangasinan, Br. 53, in Crim. Cases No. 4354-R and 4355-R, convicting the Accused-Appellant NOEL DION of two (2) counts of rape and sentencing him to *reclusion perpetua* in each case and to pay [AAA] the amount of Fifty Thousand Pesos (₱50,000.00) for each case, by way of moral damages and Fifty Thousand Pesos (₱50,000.00) for each case, as indemnity or compensatory damages, is **AFFIRMED** *in toto*.[32]

The Court of Appeals upheld the validity of the second complaint and held that "in a prosecution for rape, x x x, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission."[33] The Court of Appeals also stated that "the testimony of [AAA] bear[s] the hallmarks of truth"[34] and that "the prosecution's evidence is overwhelming that it stands against the bare denial and alibi of [Dion]."[35]

Dion is now before this Court, on appeal, with the same assignment of errors he posited before the Court of Appeals, to wit:

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE INFORMATION IN CRIMINAL CASE NO. 4355-R, DEPRIVED THE ACCUSED-APPELLANT OF HIS RIGHT TO INTELLIGENTLY PREPARE FOR HIS DEFENSE.

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[32] *Rollo*, p. 17.

[33] *Id.* at 10.

[34] *Id.* at 14.

[35] *Id.* at 15.

II

ASSUMING *ARGUENDO* THAT THE INFORMATION IN CRIMINAL CASE NO. 4355-R IS NOT DEFECTIVE, THE TRIAL COURT ERRED IN NOT FINDING THAT THERE WAS APPARENT IMPROBABILITY IN THE COMMISSION OF THE CRIME CHARGED THEREIN.

III

THE TRIAL COURT ERRED IN FINDING AS CREDIBLE THE PRIVATE COMPLAINANT'S VERSION OF THE ALLEGED SECOND RAPE INCIDENT.

IV

THE TRIAL COURT ERRED IN NOT FINDING THAT THE PRIVATE COMPLAINANT WAS AN INCREDIBLE WITNESS, HER STATEMENTS BEING RIDDLED WITH INCONSISTENCIES, AND LIES, APART FROM BEING AGAINST HUMAN NATURE.

V

THE TRIAL COURT ERRED IN NOT FINDING THAT THE RESULT OF THE MEDICAL EXAMINATION FAILED TO CONFORM TO THE ATTRIBUTED INCIDENT ON JUNE 16, 2001.[36]

In essence, Dion is assailing three things in this case: the validity of Criminal Case No. 4355-R, the credibility of AAA's testimony, and the relevancy of the findings contained in the Medico-Legal Certificate. We have carefully studied the records of this case and we find no reason to overturn the courts below.

Since the fact that AAA was only 10 years old when the rapes occurred was alleged in the two Complaints and proven during trial, Dion was tried and convicted of Statutory Rape under Article 266-A, paragraph 1, in relation to Article 266-B, paragraph 1, of the Revised Penal Code, as amended by Republic Act No. 8353. Said provisions read:

Article 266-A. Rape; When and How Committed. — Rape is committed:

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[36] CA *rollo*, pp. 55-56.

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat, or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority; and

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Article 266-B. Penalties. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

The Validity of the Complaint in Criminal Case No. 4355-R

Dion disputes the validity of the Complaint in Criminal Case No. 4355-R for allegedly having grossly violated his constitutional right to be informed of the nature and cause of the accusation against him.[37] Dion argues that because the complaint failed to state the exact, or at least the approximate, date the purported rape was committed, he was not able to intelligently prepare for his defense and persuasively refute the indictment against him.[38]

Taking a cue from the Court of Appeals, we are reproducing here Section 11, Rule 110 of the Revised Rules of Criminal Procedure, which provides:

SEC. 11. *Date of commission of the offense.* — It is **not necessary to state in the complaint or information the precise date the offense was committed except when it is a material ingredient of the offense.** The offense may be alleged to have been committed on a date as near as possible to the actual date of its commission. (Emphasis supplied.)

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[37] *Id.* at 60.

[38] *Id.* at 60-61.

It is clear from the foregoing that the requirement of indicating in the complaint or information the date of the commission of the offense applies only when such date is a material ingredient of the offense. In *People v. Espejon*,[39] we elucidated on this rule, to wit:

> An information is valid as long as it distinctly states the elements of the offense and the acts or omissions constitutive thereof. The exact date of the commission of a crime is not an essential element of it. Thus, in a prosecution for rape, the material fact or circumstance to be considered is the occurrence of the rape, not the time of its commission. The failure to specify the exact date or time when it was committed does not *ipso facto* make the information defective on its face.[40]

In *People v. Cantomayor*,[41] we explained when the time of the commission of the crime becomes relevant:

> [T]he time of the commission of the crime assumes importance only when it creates serious doubt as to the commission of the rape or the sufficiency of the evidence for purposes of conviction. The date of the commission of the rape becomes relevant only when the accuracy and truthfulness of the complainant's narration practically hinge on the date of the commission of the crime.[42]

Applying this principle in a statutory rape case, we held:

> We have repeatedly held that the date of the commission of rape is not an essential element of the crime. It is not necessary to state the precise time when the offense was committed except when time is a material ingredient of the offense. **In statutory rape, time is not an essential element. What is important is that the information alleges that the victim was a minor under twelve years of age and that the accused had carnal knowledge of her, even if the accused did not use force or intimidation on her or deprived her of reason.**[43] (Emphasis ours.)

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[39] 427 Phil. 672 (2002).

[40] *Id.* at 680-681.

[41] 441 Phil. 840 (2002).

[42] *Id.* at 847.

[43] *People v. Escultor*, 473 Phil. 717, 727 (2004).

In the case at bar, it is clear that the prosecution's evidence consisting of AAA's credible and straightforward testimony, and the certification from the Municipality of Rosales, Pangasinan Office of the Municipal Civil Registrar[44] as to AAA's date of birth, are sufficient to sustain Dion's conviction. The defense raised by Dion, which consisted of an alibi with respect to the April 2001 incident and denial as regards the June 16, 2001 allegation, were not strong enough to create a doubt on AAA's credibility.

The Credibility of AAA's Testimony

AAA's testimony is being questioned and challenged for being improbable, incredible, and inconsistent. Dion insists that while AAA's testimony remains uncorroborated, he has established and supported his defense by both documentary and testimonial evidence.

Due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof.[45] Inconsistencies in the victim's testimony do not impair her credibility, especially if the inconsistencies refer to trivial matters that do not alter the essential fact of the commission of rape. [46] The trial court's assessment of the witnesses' credibility is given great weight and is even conclusive and binding.[47] In *People v. Sapigao, Jr.*,[48] this Court explained in detail the rationale for this practice:

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[44] Records, Vol. I, p. 4.

[45] *People v. Arcosiba*, G.R. No. 181081, September 4, 2009, 598 SCRA 517, 526-527.

[46] *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533, 547.

[47] *People v. Escultor*, *supra* note 43 at 730.

[48] G.R. No. 178485, September 4, 2009, 598 SCRA 416.

It is well settled that the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination. These are important in determining the truthfulness of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. For, indeed, the emphasis, gesture, and inflection of the voice are potent aids in ascertaining the witness' credibility, and the trial court has the opportunity and can take advantage of these aids. These cannot be incorporated in the record so that all that the appellate court can see are the cold words of the witness contained in transcript of testimonies with the risk that some of what the witness actually said may have been lost in the process of transcribing. As correctly stated by an American court, "There is an inherent impossibility of determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. However artful a corrupt witness may be, there is generally, under the pressure of a skillful cross-examination, something in his manner or bearing on the stand that betrays him, and thereby destroys the force of his testimony. Many of the real tests of truth by which the artful witness is exposed in the very nature of things cannot be transcribed upon the record, and hence they can never be considered by the appellate court."[49]

In refuting AAA's testimony, Dion proffered the defense of alibi and denial.

This Court has time and again held that alibi is one of the weakest defenses, not only because it is inherently frail and unreliable, but also because it is easy to fabricate and difficult to check out or rebut.[50]

In *People v. Del Ayre*,[51] we held that the requisites for the defense are: (a) his presence at another place at the time of the perpetration of the offense; and (b) the physical impossibility of his presence at the scene of the crime.

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[49] *Id.* at 425-426.

[50] *People v. Palomar*, 343 Phil. 628, 663 (1997).

[51] 439 Phil. 73 (2002).

Dion has failed to show us that it was physically impossible for him to be at the scene of the crime in April 2001. In fact, his alibi was discredited by the testimonies of his own witnesses. Ramirez admitted that they went back to Rosales on April 1, 2001. Although he later tried to rectify this by claiming that they had returned to Bayambang in the same afternoon, the fact that the carnival had already moved to Rosales on April 1, 2001 demolished Dion's alibi that he was working at the carnival in Bayambang the entire month. We find it difficult to believe that he was in Bayambang when the carnival had already moved to Rosales. Moreover, his father's testimony that Dion was in Rosales from April 28 to 30, 2001 contradicted not only Dion's and Ramirez's testimonies, but also Mrs. Dion's claim that the carnival operated in Bayambang from April 30 to June 16, 2001, which was meant to show that Dion was away, in Bayambang, on those dates.

The RTC cannot be faulted for not giving probative weight to Dion's alibi. Besides being inherently weak for not being airtight, Dion's alibi cannot prevail against the positive identification and credible testimony made by AAA. The documentary evidence submitted by Dion was a mere certification that the carnival owned by Mr. Jose Miguel was in Bayambang for the entire month of April 2001. The RTC was correct in not giving it due consideration as it was never authenticated by the one who issued it. Moreover, it merely certified the whereabouts of the carnival, not Dion's. The inconsistent testimonies of Dion's witnesses destroyed his defense from its very foundation.

Dion's defense of denial with respect to the June 16, 2001 rape must also fail. In *People v. Espinosa*,[52] we held that:

> It is well-settled that denial, if unsubstantiated by clear and convincing evidence, is a self-serving assertion that deserves no weight in law. Denial cannot prevail over the positive, candid and categorical testimony of the complainant, and as between the positive declaration of the complainant and the negative statement of the appellant, the former deserves more credence.[53]

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[52] 476 Phil. 42 (2004).

[53] *Id.* at 62.

Dion was utterly unsuccessful in discrediting AAA's allegation that he raped her again in the evening of June 16, 2001. His claim that his version was corroborated by his witnesses is also misplaced. On the contrary, the testimonies of his witnesses were so inconsistent that rather than helping his case, his guilt was further established. For instance, while he categorically declared that he was not able to go to the dancing hall because AAA invited him to her house, his own mother testified that she herself went with Dion to the dancing hall. In addition, while they all stated that the incident happened at ten o'clock in the evening, Dion's father said that he left the hall to go to BBB's house at eight o'clock in the evening. Moreover, whereupon Dion claimed that he just happened to pass by AAA's house when AAA invited him in, Dion's father said Dion was there because AAA wanted him to accompany her to the dancing hall, while *Barangay* Chairman Neris said that Dion was supposed to pick up his uncle to go to the dancing hall. More than these terribly inconsistent statements, Dion himself could not substantiate his defense. In fact, he admitted that he and AAA rarely talked and that they had no quarrel. Since Dion was unable to offer evidence showing any reason or motive for AAA to falsely testify against him, the logical conclusion is that no such improper motive exists and the testimony of AAA should be accorded full faith and credit.[54]

The Relevancy of the Findings Contained in the Medico-Legal Certificate

Dion insists that the findings in the medical certificate cast serious doubts on AAA's claim of being raped.

This Court has made several pronouncements on the relevance of a medico-legal certificate. It is merely corroborative in character, which could be dispensed with accordingly. In *People v. Ferrer*,[55] we held:

[I]t must be pointed out that the absence of spermatozoa in the vagina of the victim does not negate the commission of rape for the simple

[54] *People v. Bulan*, 498 Phil. 586, 599 (2005).

[55] 415 Phil. 188 (2001).

reason that the mere touching of the labia of the female organ by the penis is already considered as consummated rape. The presence of sperm is not a requisite for rape. For in rape, it is not ejaculation but penetration that consummates the sexual act.

We accordingly reject accused-appellant's arguments which hinge on alleged inconsistencies between the statements made by the private complainant *vis-a-vis* the medical examination and report. The medical report is by no means controlling. This Court has repeatedly held that a medical examination of the victim is not indispensable in the prosecution for rape, and no law requires a medical examination for the successful prosecution thereof. The medical examination of the victim or the presentation of the medical certificate is not essential to prove the commission of rape as the testimony of the victim alone, if credible, is sufficient to convict the accused of the crime. The medical examination of the victim as well as the medical certificate is merely corroborative in character.[56]

Dion had failed to impeach the credible and straightforward testimony of AAA. Well-settled is the doctrine that testimonies of child-victims are given full weight and credit. When a woman or a girl-child says that she had been raped, she says, in effect, all that is necessary to prove that rape was really committed.[57]

As the rapes were committed on AAA, a minor below 12 years old, as proven by both testimonial and documentary evidence,[58] without any aggravating or mitigating circumstance, the Court of Appeals was correct in affirming the RTC's imposition upon Dion of the penalty of *reclusion perpetua,* since it found Dion guilty beyond reasonable doubt of two counts of **simple rape**, as defined under Article 266-A, paragraph 1 of the Revised Penal Code.

Civil indemnity *ex delicto* is mandatory upon a finding of the fact of rape. Moral damages are automatically awarded without need of further proof, because it is assumed that a rape victim has actually suffered moral injuries entitling the victim to such award.[59]

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[56] *Id.* at 199.

[57] *People v. Saban*, 377 Phil. 37, 45 (1999).

[58] Certificate of Live Birth, Records, Vol. I, p. 137.

[59] *People v. Flores*, G.R. No. 177355, December 15, 2010.

WHEREFORE, premises considered, the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01161 is hereby *AFFIRMED with MODIFICATION*. Accused-appellant Noel Dion *y* Duque is found *GUILTY* beyond reasonable doubt of the crime of *SIMPLE RAPE* in Criminal Case No. 4354-R and Criminal Case No. 4355-R and sentenced to *reclusion perpetua* for each count of rape. He is ordered to pay the victim AAA Fifty Thousand Pesos (₱50,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages, for each count of rape, all with interest at the rate of 6% *per annum* from the date of finality of this judgment. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin, del Castillo, and *Villarama, Jr., JJ.,* concur.

EN BANC

[A.M. No. 09-5-2-SC. July 5, 2011]

RE: BREWING CONTROVERSIES IN THE ELECTIONS IN THE INTEGRATED BAR OF THE PHILIPPINES.

[A.C. No. 8292. July 5, 2011]

ATTYS. MARCIAL M. MAGSINO, MANUEL M. MARAMBA and NASSER MAROHOMSALIC, *complainants, vs.* **ATTYS. ROGELIO A. VINLUAN, ABELARDO C. ESTRADA, BONIFACIO T. BARANDON, JR., EVERGISTO S. ESCALON and RAYMUND JORGE A. MERCADO,** *respondents.*

APPEARANCES OF COUNSEL

V.V. Orocio & Associates Law Office for Erwin M. Fortunato.
Francis L. Rafil for Atty. Nasser Marohomsalic.

R E S O L U T I O N

WHEREAS, in view of the then brewing controversies in the 2009 elections of certain members of the Board of Governors of the Integrated Bar of the Philippines (IBP) for the term 2009 to 2011, the Court designated Justice (Ret.) Santiago M. Kapunan as Officer-In-Charge of the IBP;

WHEREAS, Justice Kapunan competently assisted the Court in its supervision of the legal profession by providing leadership and guidance to the IBP in what could have been a chaotic and confusing period in the history of the integrated bar association;

WHEREAS, Justice Kapunan ably filled the leadership vacuum in the IBP and, during a period of transition, effectively steered that institution in continuing to perform its duty to Philippine society and to the legal profession;

NOW, THEREFORE, the Supreme Court of the Philippines resolves to express, as it hereby expresses, its deep appreciation for and recognition of the invaluable service to the Court and the legal profession of Justice (Ret.) Santiago M. Kapunan as Officer-In-Charge of the 2009-2011 IBP Board of Governors.

Given this 5th day of July, 2011 in the City of Manila, Philippines.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Peralta, J., on leave.

EN BANC

[A.M. No. 2011-04-SC. July 5, 2011]

Re: Gross Violation of Civil Service Law on the Prohibition Against Dual Employment and Double Compensation in the Government Service Committed by Mr. Eduardo V. Escala, SC Chief Judicial Staff Officer, Security Division, Office of Administrative Services.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GROSS DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; COMMITTED IN CASE AT BAR; PENALTY. — All court personnel ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public. For knowingly and willfully transgressing the prohibition on dual employment and double compensation, as well as the Court's rules for its personnel on conflict of interest, respondent violated the trust and confidence reposed on him by the Court. Considering the sensitive and confidential nature of his position, the Court is left with no choice but to declare the respondent guilty of gross dishonesty and conduct prejudicial to the best interest of the service, which are grave offenses punished by dismissal.

R E S O L U T I O N

***PER CURIAM*:**

Before us is an administrative case which arose from the investigation conducted by the Office of Administrative Services (OAS) in connection with a complaint against Mr. Eduardo V. Escala, SC Chief Judicial Staff Officer, Security Division, OAS for alleged gross violation of the Civil Service Law on the prohibition against dual employment and double compensation in the government service.

I. *Antecedents*

Respondent was appointed by the Court as SC Chief Judicial Staff Officer, Security Division, OAS on July 14, 2008. His application papers show he has experience and training as a police officer, having been employed as Chief Inspector of the Philippine National Police (PNP) Aviation Security Group at the time of his appointment in the Supreme Court.

Immediately upon his appointment on July 14, 2008, respondent was allowed to assume office and perform his duties, for reasons of exigency in the service although he has yet to comply with the submission of all the documentary requirements for his appointment.

During the course of his employment, an anonymous letter[1] reached the OAS reporting the respondent's gross violation of the Civil Service Law on the prohibition against dual employment and double compensation in the government service. The letter alleged that respondent accepted employment, and thus received salaries and other benefits, from the Court ***and also*** from the PNP of which he remained an active member.

The OAS' inquiries on this allegation confirmed that prior to his employment at the Court, respondent was an active member of the PNP assigned with the Aviation Security Group — 2nd Police Center for Aviation Security at the Manila Domestic Airport in Pasay City, with a permanent status and rank of Police Chief Inspector. Taking the chance to explore his opportunities and skills outside of the police service, he applied for the position of SC Chief Judicial Staff Officer, Security Division, OAS. While employed in the Court and receiving his regular compensation, he continued to be a bonafide member of the PNP assigned with the Aviation Security Group with the same status and rank of Police Chief Inspector until the date when he optionally retired on September 30, 2009.

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[1] Anonymous Letter dated March 4, 2009, OAS Report dated June 27, 2011, Annex "A".

The OAS was also informed that the Internal Affairs Office (IAO) of the PNP is likewise carrying out a separate probe and investigation on respondent for the same alleged gross violation of the Civil Service Law.

Considering the seriousness of the matter, respondent was preventively suspended by the Court pending the results of the IAO's investigations and the separate administrative investigation of the OAS.[2]

In the OAS Memorandum dated May 6, 2011,[3] respondent was directed to explain why he should not be administratively charged with gross dishonesty and conduct prejudicial to the best interest of the service for violation of the Civil Service Law on the prohibition against dual employment and double compensation in the government service.

In his letter-comment dated May 26, 2011,[4] respondent submitted to the findings of the OAS but "*humbly implore your magnanimity not to charge him with gross dishonesty and conduct prejudicial to the best interest of the service*"[5] and offered the following explanation:

> 2.1 On January 24, 2008, I applied for optional retirement as a member of the Philippine National Police (PNP). At that time, I was informed that my application would be effective on March 31, 2008, or a period of three (3) months from its submission date.
>
> 2.2 However, I was advised that, as part of the new policy on optional retirement, the effectivity of my application would be six (6) months from date of its submission, or on July 14, 2008.
>
> 2.3 Pending the approval of my application for optional retirement, I applied with the Honorable Supreme Court for the

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[2] *Id.*, Annex "B". In the meantime, Mr. Joery L. Gayanan, SC Supervising Judicial Staff Officer, Security Division, OAS, was designated as Officer-in-Charge of the said division during the period that respondent is under preventive suspension.

[3] *Id.*, Annex "C".

[4] *Id.*, Annex "D".

[5] *Id.*

position of Chief Security Officer. In the course of my interview, I declared that the Philippine National Police (PNP) had yet to formally approve my application for optional retirement.

2.4 Due to the urgent need to fill-in the said vacant position I was hired by the Honorable Supreme Court as its employee which took effect on July 14, 2008. From then on, and as shall be further discussed hereunder, I have faithfully discharged my duties and responsibilities in order to ensure the safety and security of the Honorable Supreme Court, as an institution; the Honorable Justices; and the court personnel.

2.5 In good faith, and without concealing any material fact from the Honorable Supreme Court, I submitted all the required documents and clearances in support of my appointment. At that time, I had no reason to doubt that my optional retirement would be deemed effective on July 14, 2008-which date actually coincided with the effectivity of my employment with the Honorable Supreme Court.

2.6 But, then, as fate had it, my application for optional retirement was not immediately acted upon by the Philippine National Police (PNP) within the original period of my request. As it is, such application was bypassed several times, and I was considered optionally retired on September 30, 2009.

2.7 During the period of almost fourteen (14) months, my employment with the Honorable Supreme Court overlapped with that of the Philippine National Police (PNP). In the interim, I likewise received my corresponding monthly salaries from the Philippine National Police (PNP). Not for anything else, I did so for economic reasons.

2.8 Without proffering any justification for may actions, which I now realize to be totally uncalled for, I was then of the honest impression that I was still entitled to such monthly salaries pending the approval of my application for optional retirement which dragged for a longer period of time with no fault on my part."[6]

Offering no justification and admitting his fault, and cognizant of the consequences of his wrong judgment, respondent extends his apologies to the Court and to the PNP. He also informed the OAS that he made arrangements with the PNP for the return,

[6] *Id.*

as in fact he had already returned, the total amount of ₱560,982.86 representing his salaries and allowances which he received from the PNP covering the period July 2008 to September 2009.[7] He allegedly made such restitution to shield the PNP from undue prejudice and to erase the stigma which the incident has caused upon his person and honor.

Finally, advancing his track record of good performance both in the PNP and the Court, respondent seeks compassion and prays that the consequences be tempered.

II. *Recommendation*

In its report to the Court dated June 27, 2011, the OAS presented its findings that by respondent's own admission, without offering any justification, his acts have prejudiced the government. His offer of mitigating circumstance — delay in the processing of his retirement papers — is unacceptable as records of the PNP will contradict this. The Service Record issued by the PNP in his favor for retirement purposes was dated August 26, 2008.[8] Likewise, his Certificates of Clearances, namely: (a) no pending administrative case was dated August 13, 2008[9]; (b) no money accountability was dated October 29, 2008[10] and; (c) property accountability/responsibility was dated October 31, 2008.[11] These documents clearly show that he only started processing the requirements for his application for optional retirement when he was already connected with the Court.

The OAS found respondent's claim that he applied for optional retirement as early as January 2008 to be merely an afterthought. The OAS further noted that the vacancy for the position of SC Chief Judicial Staff Officer of the Security Division existed only after April 30, 2008. Such circumstances lead the OAS to

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[7] *Id.*, Annex "E".

[8] *Id.*, Annex "F".

[9] *Id.*, Annex "G".

[10] *Id.*, Annex "H".

[11] *Id.*, Annex "I".

conclude that respondent first made clear to be appointed to the Court prior to filing his application for retirement to be sure that he transfers to another government agency, at the same time enjoying the fruits of his retirement from the PNP. It should be noted that governing law on retirement of members of the PNP is different from those with the Court. If the law is the same, respondent's employment with the Court is simply one of "transfer." However, his application to and subsequent appointment to the Court is one of reemployment as evidenced by his sworn Certificate of Gratuity[12] which he submitted to the OAS and where he clearly indicated that the inclusive dates of employment with the PNP was from March 29, 1999 to July 13, 2008, and that the cause of his separation was optional retirement.

The OAS thus found respondent's indirect claim of good faith unavailing. His regular receipt of his salaries from the PNP despite presumably exclusively working with the Court implies a deliberate intent to give unwarranted benefit to himself and undue prejudice to the government especially so by his regular submission of monthly/daily time record as a mandatory requirement for inclusion in the payroll.

The OAS also found that respondent became aware of the approval of his application for retirement as early as September 30, 2009. Notwithstanding such knowledge, he did not immediately refund his overpayment, if that was indeed the case, and that his act of returning his salaries after the period of 20 months was also a mere afterthought as he did so only because the Court became aware of it and directed him to explain. Would he have done so if no report of his actuation was ever brought to the attention of the Court? The lapse of almost 2 years without him doing so speaks of his intent not to return the same.

Good faith, here understood, is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an

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[12] *Id.,* Annex "J".

unconscionable advantage. An individual's personal good faith is a concept of his own mind and, therefore, may not conclusively be determined by his protestations alone. It implies honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. The essence of good faith lies in an honest belief in the validity of one's right, ignorance of a superior claim, and absence of intention to overreach another.[13]

The OAS found respondent's actuation even amounts to gross dishonesty. His receipt of salaries from the PNP despite not rendering any service thereto is a form of deceit. Jurisprudence states that dishonesty implies a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[14]

That respondent actually rendered services to the PNP, if any, despite employment in the Court, is inconsequential. The prohibition against government officials and employees, whether elected or appointed, from concurrently holding any other office or position in the government is contained in Section 7, Article IX-B of the 1987 Constitution which provides:

x x x x x x x x x

Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

The prohibition on dual employment and double compensation in the government service is further specified under Sections 1 and 2, Rule XVIII of the Omnibus Rules Implementing Book V of E.O. No. 292, *viz*:

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[13] *PNB v. De Jesus*, 458 Phil. 454, 459-460 (2003).

[14] *Philippine Amusement and Gaming Corporation (PAGCOR) vs. Rilloraza*, 359 SCRA 525, citing Black's *Law Dictionary*, Sixth ed., p. 468, 1990.

> Sec. 1. No appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations with original charters or their subsidiaries, unless otherwise allowed by law or by the primary functions of his position.
>
> Sec. 2. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, x x x.

Moreover, Section 5, Canon III of the Code of Conduct for Court Personnel, specifically provides that:

Sec. 5 The full-time position in the Judiciary of every court personnel shall be the personnel's primary employment. For purposes of this Code, "primary employment" means the position that consumes the entire normal working hours of the court personnel and requires the personnel's exclusive attention in performing official duties.

Outside employment may be allowed by the head of office provided it complies with all of the following requirements:

> *(a) The outside employment is not with a person or entity that practices law before the courts or conducts business with the Judiciary;*
>
> *(b) The outside employment can be performed outside of normal working hours and is not incompatible with the performance of the court personnel's duties and responsibilities;*
>
> *(c) The outside employment does not require the practice of law; Provided, however, that court personnel may render services as professor, lecturer, or resource person in law schools, review or continuing education centers or similar institutions;*
>
> *(d) The outside employment does not require or induce the court personnel to disclose confidential information acquired while performing duties; and*
>
> *(e) The outside employment shall not be with the legislative or executive branch of government, unless specifically authorized by the Supreme Court.*

Where a conflict of interest exists, may reasonably appear to exist, or where the outside employment reflects adversely on the integrity of the Judiciary, the court personnel shall not accept the outside employment.

With the undisputed facts of the case, the OAS considers that there is sufficient evidence to support a finding that respondent is liable for gross dishonesty and conduct prejudicial to the best interest of the service. His non-disclosure of the material fact that he was still employed as an active member of the PNP and receiving his monthly salaries therein during the period that he is already a Court employee is considered substantial proof that he tried to cheat/defraud both the PNP and the Court. This is an affront to the dignity of the Court. Indeed, respondent has transgressed the Constitution and the Civil Service law on the prohibition on dual employment and double compensation in the government service.

Thus, after its due investigation, the OAS submitted its report to the Court finding respondent guilty of the charges and recommending:

a. that Mr. Eduardo V. Escala, SC Chief Judicial Staff Officer, Security Division, Office of Administrative Services, be held liable for gross dishonesty and conduct prejudicial to the best interest of the service for not disclosing the fact that despite accepting employment with and receiving salaries from the Supreme Court, he is still receiving his salaries and benefits from the Philippine National Police as an active member thereof; and

b. that he be dismissed from the service with forfeiture of all benefits, except accrued leave credits, if he has any, and with prohibition from reemployment in any branch, agency or instrumentality of the government including government-owned or controlled corporations.[15]

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[15] *Supra,* note 1, p. 7.

We fully agree with the findings of the OAS and adopt its recommendations.

All court personnel ought to live up to the strictest standards of honesty and integrity, considering that their positions primarily involve service to the public. For knowingly and willfully transgressing the prohibition on dual employment and double compensation, as well as the Court's rules for its personnel on conflict of interest, respondent violated the trust and confidence reposed on him by the Court. Considering the sensitive and confidential nature of his position, the Court is left with no choice but to declare the respondent guilty of gross dishonesty and conduct prejudicial to the best interest of the service, which are grave offenses punished by dismissal.

WHEREFORE, the Court finds respondent Eduardo V. Escala, SC Chief Judicial Staff Officer, Security Division, OAS *GUILTY* of gross dishonesty and conduct prejudicial to the best interest of the service, and imposes on him the penalty of *DISMISSAL* from the service and forfeiture of all benefits with prejudice to re-employment in any government agency, including government-owned and controlled corporations.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Peralta, J., on leave.

EN BANC

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

HACIENDA LUISITA, INCORPORATED, *petitioner,*

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

SYLLABUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MENDOZA, *J., separate opinion*:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SERENO, *J., dissenting opinion*:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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D E C I S I O N

VELASCO, JR., *J.*:

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

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

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

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

[3] *Id.* at 392.

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

[5] *Id.*

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

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

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

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

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

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

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

[9] *Id.*

[10] *Id.*

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

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

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

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

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

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

The Case

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

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

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

[15] *Supra* note 2.

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

The Facts

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

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

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

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

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

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

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

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

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

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

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

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

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

[22] *Id.* at 3645.

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

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

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

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

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

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[24] *Id.* at 3811.

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

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

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

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

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

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

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

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

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

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

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

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

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[27] **Section 1.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[28] *Rollo*, p. 386.

[29] *Id.* at 148.

[30] *Id.* at 3767.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FARMWORKER-BENEFICIARIES

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

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

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

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

2.) Service and amelioration bonuses;

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

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

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

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

SPIN-OFF CORPORATION

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

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

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

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

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

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

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

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

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

x x x x x x x x x

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

MECHANICS OF STOCK DISTRIBUTION PLAN

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

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

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

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

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

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

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

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

STOCK RIGHTS AND RESTRICTIONS

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

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

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

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

ADVANTAGES OF STOCK PLAN
OVER LAND DISTRIBUTION

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

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

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

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

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

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

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

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

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

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

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

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

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

IMPORTANCE TO
ECONOMIC DEVELOPMENT

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

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

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

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

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

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CONFORMITY OF
FARMWORKER-BENEFICIARIES

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

CONCLUSION

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

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

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

[37] *Rollo*, p. 14.

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

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

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

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

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

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

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

[41] *Rollo*, p. 151.

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

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

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

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

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

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

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

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

Two separate groups subsequently contested this claim of HLI.

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

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

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

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

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

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

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

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

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

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

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

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

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

[49] *Id.* at 1362.

[50] *Id.* at 3669.

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

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

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

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

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

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

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[52] *Id.* at 1362.

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

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

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

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

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

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

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

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

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

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[58] *Id.* at 546.

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

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

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

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

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

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

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

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

IV. IDENTIFICATION OF THE PROBLEMS/ISSUES/CONCERNS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.2.2. **On the issue of representation**

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

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

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

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

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

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

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

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

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

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

V. PRELIMINARY CONSIDERATIONS

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

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

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

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

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

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

VI. FINDINGS, ANALYSIS AND RECOMMENDATION:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[67] *Id.* at 100.

[68] *Id.* at 101.

[69] *Id.* at 146.

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

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

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

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

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

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

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

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

[72] *Id.* at 19.

[73] *Id.* at 52

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Issues

HLI raises the following issues for our consideration:

I.

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

II.

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

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

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

III.

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

IV.

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

On the other hand, RCBC submits the following issues:

I.

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

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

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

II.

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

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

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

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

Our Ruling

I.

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

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

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

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

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

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

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

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[85] *Id.* at 81.

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

[87] *Rollo*, p. 82.

[88] *Id.* at 149.

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

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

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

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

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

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

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

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

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

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

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

PARC's Authority to Revoke a Stock Distribution Plan

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

We disagree.

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

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[92] *Rollo*, p. 871.

[93] *Id.* at 38.

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

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

Gordon v. Veridiano II is instructive:

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

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

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

[95] *Id.*

[96] *Id.*

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

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

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

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

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

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

[99] EO 229, Sec. 18.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We are not persuaded.

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

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

Constitutional Issue

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

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

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

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

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

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

(1) there is an actual case or controversy;

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

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

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

[107] *Id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

These requisites do not obtain in the case at bar.

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

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

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

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

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

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

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

[116] *Id.* at 445.

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

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

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

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

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

MR. MONSOD. Yes.

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

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

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

MS. NIEVA. That is one way.

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

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

x x x x x x x x x

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

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

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

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

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

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

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

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

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

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

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

This contention has no merit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The petition is not impressed with merit.

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

Sec. 2 of RA 6657 states:

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

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

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

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

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

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

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

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

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

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

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[128] *Rollo*, p. 3676.

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

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

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

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

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

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

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[130] Sec. 5(2).

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

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

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

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

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

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

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

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

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

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

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[132] MOA, 4th Whereas clause.

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

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

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

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

SEC. 31. Corporate Landowners x x x

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

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

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

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

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

On the Conversion of Lands

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

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

The PARC is wrong.

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

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

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

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

On the 3% Production Share

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

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

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

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

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

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

x x x x x x x x x

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

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

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

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

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

On Titles to Homelots

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On "Man Days" and the Mechanics of Stock Distribution

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

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

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

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

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

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

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

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

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

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

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[139] RA 6657, Sec. 31.

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

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

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

> Justice Abad: If the SDOA did not take place, the other thing that would have happened is that there would be CARP?
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> Atty. Dela Merced: Yes, Your Honor.
>
> Justice Abad: That's the only point I want to know x x x. Now, but they chose to enter SDOA instead of placing the land under CARP. And for that reason those who would have gotten their shares of the land actually gave up their rights to this land in place of the shares of the stock, is that correct?
>
> Atty. Dela Merced: It would be that way, Your Honor.
>
> Justice Abad: Right now, also the government, in a way, gave up its right to own the land because that way the government takes own [sic] the land and distribute it to the farmers and pay for the land, is that correct?
>
> Atty. Dela Merced: Yes, Your Honor.
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> Justice Abad: And then you gave thirty-three percent (33%) of the shares of HLI to the farmers at that time that numbered x x x those who signed five thousand four hundred ninety-eight (5,498) beneficiaries, is that correct?

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

Atty. Dela Merced: Yes, Your Honor.

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

Atty. Dela Merced: Yes, Your Honor.

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

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

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

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

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

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

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

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

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[142] *Id.* at 1100.

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. (Emphasis supplied.)

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

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

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

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

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

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

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

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

III.

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

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

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

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

[144] *Rollo*, p. 1362.

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

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

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

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

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

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

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

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

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

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

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

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

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

[149] *Rollo*, p. 1568.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[153] *Supra* note 2.

[154] Memorandum of RCBC, p. 52.

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

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

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

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

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

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

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

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

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[155] *Id.*

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

[157] *Id* at 53.

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

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

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

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

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

[159] RA 8974, Sec. 6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV.

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

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

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

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

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[166] *Rollo,* p. 193.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The temporary restraining order is lifted.

SO ORDERED.

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

Corona, C.J., see dissenting opinion.

Brion, J., see separate opinion.

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

Mendoza, J., see separate opinion.

Sereno, J., see dissenting opinion.

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

Peralta, J., on official leave.

SEPARATE CONCURRING AND DISSENTING OPINION

BRION, *J.*:

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

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

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

FACTUAL ANTECEDENTS

Acquisition of Hacienda Luisita

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

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

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[1] *Rollo*, p. 3044.

[2] *Id.* at 3809.

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

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

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

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

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

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

The Stock Distribution Option Agreement

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

[3] *Id.* at 3645.

[4] *Id.* at 3646.

[5] *Id.* at 3810.

[6] *Id.* at 3810.

[7] *Id.* at 3811.

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

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

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

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

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

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[8] *Id.* at 3811.

[9] *Id.* at 3811.

[10] *Id.* at 3811.

[11] *Id.* at 3811.

[12] *Id.* at 3812.

[13] *Id.* at 3653.

Land Conversion and Sale to Third Parties

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

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

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

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

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[14] *Id.* at 3668.

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

[16] *Id.* at 4227.

[17] *Id.* at 4229.

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

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

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

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

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

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

[20] *Id.* at 4232.

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

[22] *Id.* at 4233.

[23] *Id.* at 4235.

[24] *Id.* at 4239.

[25] *Id.* at 4240.

[26] *Id.* at 3669.

The Petitions before PARC

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

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

Based on the parties' pleadings and the ocular inspection conducted, the Special Task Force issued a Terminal Report on September 22, 2005, which found that the HLI did not comply with its obligations under the law in implementing the SDP.[30] The pertinent portions of the Terminal Report are quoted below:

VI. FINDINGS, ANALYSIS AND RECOMMENDATION:

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

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

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[27] *Id.* at 153-156.

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

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

[30] *Id.* at 386-405.

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

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

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

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

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

Herein, however, there is yet no Certificate of Compliance issued.

The reason is simple. Despite the lapse of sixteen (16) years, from the time the SDP was approved in November 1989, by resolution of the Presidential Agrarian Reform Council (PARC), the objective and policy of CARP, *i.e.*, acquisition and distribution (herein under the Stock Distribution Plan, only shares of stocks) is yet to be fully completed; the FWBs, instead of the promised/envisioned better life under the CARP (herein, as corporate owner), do still live in want, in abject poverty, highlighted by the resulting loss of lives in their vain/futile attempt to be financially restored at least to where they were before the CARP(SDP) was implemented. While they were then able to make both ends meet, with the SDP, their lives became miserable.

2. For the foregoing considerations, as further dramatized by the following violations/noncompliance with the guidelines prescribed, which are legally presumed as integrated in the agreements/accords/stipulations arrived at thereunder like the HLI SDP, namely:

2.1 Noncompliance with Section 11 of Administrative Order No. 10, Series of 1988, which provides:

> "The approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation plan.

The Stock Distribution Plan, however, submitted a 30-year implementation period in terms of the transfer of shares of stocks to the farmworkers beneficiaries (FWBs). The MOA provides:

> "At the end of each fiscal year: for a period of 30 years, SECOND PARTY shall arrange with the FIRST PARTY the acquisition and distribution to the THIRD PARTY on the basis of the number of days worked and at no cost to them of one-thirtieth (1/30) of…"

Plainly, pending the issuance of the corresponding shares of stocks, the FWBs remain ordinary farmers and/or farmworkers and the land remain under the full ownership and control of the original owner, the HLI/TADECO.

To date the issuance and transfer of the shares of stocks, together with the recording of the transfer, are yet to be complied with.

2.2 Noncompliance with the representations/warranties made under Section 5(a) and (b) of said Administrative Order No. 10.

As claimed by HLI itself, the corporate activity has already stopped so that the contemplated profitability, increased income and greater benefits enumerated in the SDP have remained mere illusions.

2.3 The agricultural land involved was not maintained "unfragmented." At least, 500 hectares hereof have been carved out after its land use has been converted to non-agricultural uses.

The recall of said SDP/SDO of HLI is recommended. More so since:

1. **It is contrary to Public Policy**

Section 2 of Republic Act 6657 provides that the welfare of the landless farmworkers will receive the highest consideration to promote social justice. As such, the State undertake a more equitable distribution and ownership of land that shall provide farmworkers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands.

In the case of Hacienda Luisita, the farmworkers alleged that the quality of their lives has not improved. In fact, it even deteriorated especially with the HLI Management declaration that the company has not gained profits, in the last 15 years, that there could be no declaration and distribution of dividends.

2. The matter of issuance/distribution shares of stocks in lieu of actual distribution of the agricultural land involved, was made totally dependent on the discretion/caprice of HLI. Under the setup, the agreement is grossly onerous to the FWBs as their man days of work cannot depart from whatever management HLI unilaterally directs.

They can be denied the opportunity to be granted a share of stock by just not allowing them to work altogether under the guise of rotation. Meanwhile, within the 30-year period of bondage, they may already reach retirement or, worse, get retrenched for any reason, then, they forever lose whatever benefit he could have received as regular agrarian beneficiary under the CARP if only the SDP of HLI were not authorized or approved.

Incidentally, the FWBs did not have participation in the valuation of the agricultural land for the purpose of determining its proportionate equity in relation to the total assets of the corporation. Apparently, the sugarlands were undervalued.

3. The FWBs were misled into believing by the HLI, through its carefully worded Proposal that "xxx the stock distribution plan envisaged by Tarlac Development Corporation, in effect, assured of:

> "A. Distributing the shares of stock over a number of years among the qualified beneficiaries at no cost to them;
>
> B. Allowing the farmworker to continue to work on the land as such and receive the wages and other benefits provided for by his collective bargaining agreement with the corporate landowner;
>
> C. Entitling him to receive dividends, whether in cash or in stock, on the shares already distributed to him and benefit from whatever appreciation in value that the said shares may gain as the corporation becomes profitable;
>
> D. Qualifying him to become the recipient of whatever income-augmenting and benefit-improving schemes that the spin-off corporation may establish, such as the payment of the guaranteed three (3%) percent of gross sales every year and the free residential or homelots to be allotted to family beneficiaries of the plan; and
>
> E. Keeping the agricultural land intact and unfragmented, to maintain the viability of the sugar operation involving the farm as a single unit and thus, warrant to the acknowledged farmworker-beneficiaries, hand-in-hand with their acquisition of the shares of the capital stock of the corporation owning the land, a continuing and stable source of income" (Annex "A", *supra*).

At the expense of being repetitive, the sugar-coated assurances were, more than enough to made them fall for the SDO as they made them feel rich as "stock holder" of a rich and famous corporation despite the dirt in their hands and the tatters, they use; given the feeling of security of tenure in their work when there is none; expectation to receive dividends when the corporation has already suspended operations allegedly due to losses; and a stable sugar production by maintaining the agricultural lands when a substantial portion thereof, almost 1/8 of the total area, has already been converted to non-agricultural uses.

Based on the Terminal Report, the DAR issued a Memorandum dated September 30, 2005, recommending to the PARC Executive Committee the revocation of the HLI SDP that the PARC initially approved under Resolution No. 89-12-2 dated November 21, 1989. According to the September 30, 2005 Memorandum:

> The DAR Special Legal Team, created by the undersigned to make a follow through on the work start**e**d by the Hacienda Luisita Task Force during the time of former Secretary Rene C. Villa, for the purpose of reviewing the implementation of subject SDP, has conducted a thorough review of Hacienda Luisita's operation in relation to its implementation, and consistent with the provisions of the relevant PARC resolution and the subsequent Memorandum of Agreement (MOA) executed by and between the HLI Management and the concerned Farm Workers Beneficiaries (FWBs), has recommend (sic) for the scrapping and/or revocation of said SDP, on the following grounds, to wit:
>
> 1. That despite the lapse of sixteen (16) years, the lives of the concerned Farm Workers Beneficiaries (FWBs) became even more miserable, contrary to what has been envisioned by the said SDP. This "reality" clearly undermines Section 2 of RA 6657 which provides, "that the welfare of landless farm workers will receive the highest consideration to promote social justice, under which context, the State shall undertake a more equitable distribution and ownership of land that shall provide farm workers with the opportunity to enhance their dignity and improve the quality of their lives through greater productivity of agricultural lands."
> 2. Non-compliance on the part of HLI to relevant provisions of Administrative Order No. 10, Series of 1988, specifically Sections 5(a) and 5(b) and Section 11, thereof, in relation to the implementation of said SDP.

Section 5 (a) and (b) provides:

> Section 5. Criteria for Evaluation Proposal — The stock distribution plan submitted by the corporate landowner-applicant shall meet the following minimum criteria:
>
> a. That the continued operation of the corporation with its agricultural land intact and unfragmented is viable, with potential for growth and increased profitability;

b. That the plan for stock distribution to qualified beneficiaries would result in increased income and greater benefits to them, than if their lands were divided and distributed to them individually; x x x

The following are the violations committed in the above-cited provisions, to wit:

— The HLI Management declared that the company has not gained profits in the last 15 years. Hence, the FWBs of HLI do not receive financial return *i.e.*, ten percent (10%) dividend, three percent (3%) gross production share (partial), and three percent (3%) out of thirty-three percent representing equity shares from the proceeds of the sale of the converted land from HLI (partial);

— In the Focused Group Discussion (FGC) and Ocular Inspection (OCI), it was found that the number of shares of stocks to be received by the FWBs depends on their designations (*i.e.*, permanent, casual, or seasonal) and the number of man days. Retired and retrenched workers are not given shares of stocks and cease to be stockholders. This setup is grossly onerous to the FWBs and one-sided in favour of HLI;

— Not all FWBs were given homelots; and

— The subject agricultural land was not maintained "unfragmented." More than 1/8 of the total area or 500 hectares has already been converted to non-agricultural use.

Section 11 provides:

Section 11. Implementation — Monitoring of the Plan — the approved stock distribution plan shall be implemented within the three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded on the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the stock distribution plan.

Upon completion, the corporate landowner-applicant shall be issued a Certificate of Compliance. The Secretary of Agrarian Reform or his designated representatives shall strictly monitor the implementation to determine whether or not there has been compliance with the approved stock distribution plan as well as the requirements of the CARP. For this purpose, the corporate

> landowner-applicant shall make available its premises for ocular inspection, its personnel for interview, and its records for examination at normal business hours.
>
> Clearly, there is no Certificate of Compliance issued up to this date, or after sixteen (16) years from the time of approval of said SDP by the Presidential Agrarian Reform Council. This could be traced to one of the onerous provisions of the MOA between HLI and the FWBs which stipulates a 30-year period of implementation to complete the required distribution of shares of stocks, a clear violation of the explicit provision of Section 11 of Administrative Order No. 10, Series of 1988, mandating a 3-month period of implementation for such purposes.[31]

On October 13, 2005, the PARC Executive Committee created the PARC ExeCom Validation Committee *via* Resolution No. 2005-SP-01 to review the recommendations of the DAR Secretary. After meeting with all the parties involved, the PARC ExeCom Validation Committee confirmed the DAR's recommendation to revoke the SDP. On December 13, 2005, PARC issued **Resolution No. 2005-32-01**, revoking the SDP and placing HLI lands under compulsory CARP coverage.[32] HLI moved for the reconsideration of this PARC resolution on January 2, 2006.[33] On the same day, the DAR issued a Notice of Coverage to HLI. This Notice of Coverage included the parcels of land already transferred to LIPCO and RCBC.[34]

The Present Case

While its motion for reconsideration was still pending with the DAR, HLI filed the present petition for *certiorari* with this Court, assailing PARC Resolution No. 2005-32-01 and the Notice of Coverage. On May 3, 2006, PARC subsequently issued Resolution No. 2006-34-01, denying HLI's motion for reconsideration.[35]

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[31] *Rollo*, pp. 340-342.

[32] *Id.* at 730-731.

[33] *Id.* at 732-765.

[34] *Id.* at 103-104.

[35] *Rollo*, pp. 407-425.

On July 13, 2006, the Office of the Solicitor General (*OSG*), representing PARC and the DAR, filed its Comment to HLI's petition.

On December 2, 2006, Noel Mallari, the Secretary General of AMBALA, filed a Manifestation and Motion with Comment with this Court, explaining that he had already broken away from AMBALA and had formed the Farmworkers Agrarian Reform Movement, Inc. (*FARM*), now respondent-intervenor, with other former members of AMBALA.[36] Noel Mallari subsequently left FARM and returned to AMBALA. Renato Lalic and the other members of FARM continued as respondent-intervenors in these proceedings.

On October 30, 2007, RCBC moved to intervene in the proceedings as a petitioner-intervenor;[37] LIPCO similarly intervened.[38] In essence, these two petitioners-in-intervention assailed the Notice of Coverage for including the parcels of land that they claim to have purchased in good faith from HLI.

The Court conducted oral arguments on August 18, 2010 and August 24, 2010.

On August 31, 2010, the Court issued a Resolution creating a mediation panel[39] to explore the possibility of the parties coming to a compromise agreement. When the parties could not come to a suitable agreement within the given period of time, the mediation panel suspended further proceedings.

THE ISSUES

HLI holds the view that the PARC has no authority to nullify, revoke or rescind the PARC-approved SDP. It further disputes the private respondent farmer groups' claim that the SDP is

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[36] *Id.* at 436-450.

[37] *Id.* at 1350-1359.

[38] *Id.* at 1535-1544.

[39] The Mediation Panel is composed of former Associate Justice Ma. Alicia Austria-Martinez, as Chairperson, and former CA Justices Hector Hofilena and Teresita Dy-Liacco Flores as members. *Rollo*, Volume 3, pp. 3060-3062.

void for being illegal. HLI stresses in this regard that the SDP authorized the distribution of the following benefits to the FWBs:

a. 59 million shares of stock distributed for free including fringe benefits;

b. ₱3 billion in salaries, wages, and other benefits;

c. ₱150 million representing 3% of the gross sales of the production of the agricultural lands;

d. ₱37.5 million representing 3% of the proceeds from the sale of the 500 hectares of agricultural land;

e. ₱2.4 million representing 3% of the proceeds from the sale of the 80 hectares for the Subic-Clark-Tarlac Expressway (*SCTEX*); and

f. 240 sq. m. homelots to each of the 3,274 families of the FWBs, distributed for free.[40]

The FWBs, represented by the Supervisory Group, *Alyansa ng mga Manggagawang Bukid ng Hacienda Luisita* (AMBALA) and FARM, contradict this HLI position with the claim that in the 16 years that the HLI was operational, their lives grew progressively worse, due mainly to HLI's failure to comply with its promises and obligations under the SDP.

Taking this argument further, FARM opines that the second paragraph of Section 31 (providing for the stock distribution option as a mode of agrarian reform) is unconstitutional, as it violates the intent of Section 4, Article XIII of the Constitution, which recognizes the right of farmers and farmworkers to own, directly or collectively, the lands they till. FARM also claims that this provision contains a suspect classification involving a vulnerable sector protected by the Constitution, as it discriminates against farmers working on corporate farms/*haciendas*.

From the various submitted pleadings,[41] the parties call upon the Court to resolve the following issues:

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[40] *Rollo*, Volume 3, pp. 3694-3695.

[41] The parties submitted the following pleadings:

I. Whether the private respondents are the real parties-in-interest and have the legal personality to file their petitions before the Department of Agrarian Reform (*DAR*);

II. Whether Section 31 of the CARL, providing for the stock distribution option, is constitutional;

III. Whether the PARC has jurisdiction to recall or revoke the HLI's SDP that it earlier approved;

IV. Whether there is legal or factual basis to revoke the SDP; and

V. Whether LIPCO and RCBC are transferees in good faith.

I submit this Separate Opinion to concur with some of the positions in the *ponencia* and in the other opinions, and to express my own positions, particularly on **the consequences of the illegality of the SDP.**

THE SEPARATE OPINION

I. The private respondent farmer groups are real parties-in-interest

HLI concedes that the private respondent farmer groups, whose members signed and filed the petitions before the DAR, are real parties-in-interest.[42] These groups are the Supervisory

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Petitioner HLI's Memorandum dated September 23, 2010;

b) Memorandum dated September 12, 2010, filed by private respondents AMBALA-Mallari Group, United Luisita Workers' Union, and the Supervisory Group, as represented by Atty. Santoyo;

c) Memorandum dated September 21, 2010, filed by private respondent AMBALA-Galang, as represented by Atty. Pahilga of Sentro Para sa Tunay na Repormang Agraryo Foundation (SENTRA);

d) Memorandum dated September 24, 2010, filed by respondent-intervenor FARM, as represented by Atty. Monsod;

e) Memorandum dated September 23, 2010, filed by public respondents' PARC and DAR, as represented by the Office of the Solicitor General;

f) Petitioner-Intervenor LIPCO's September 23, 2010 Memorandum; and

g) Petitioner-Intervenor RCBC's September 23, 2010 Memorandum.

[42] HLI Memorandum, p. 73.

Group (represented by Julio Zuniga and Windsor Andaya) and AMBALA (represented by Rene Galang and Noel Mallari). FARM (represented by Renato Lalic), a newly-formed organization of former AMBALA members, sought to intervene in the proceedings before the Court to assail the constitutionality of Section 31 of the CARL.

At the same time, HLI cautions that their interest in this case does not necessarily characterize them as "farmers and regular farmworkers" who are entitled to landownership under the CARL.[43] HLI argues that the "farmers and regular farmworkers" entitled to own the lands they till exclude seasonal farmworkers, as the Court ruled in *Carlos O. Fortich, et al. v. Renato C. Corona, et al*.[44] Thus, it posits that the private respondents who are not among its 337 permanent farmworkers[45] cannot be considered as beneficiaries under Section 22 of the CARL.[46]

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[43] *Ibid.*

[44] G.R. No. 131457, August 19, 1999, 312 SCRA 751, 761.

[45] HLI states that it has only 337 permanent farmworkers, of the 10,502 FWBs; HLI Memorandum, p. 74.

[46] Section 22. *Qualified Beneficiaries.* — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;

(b) regular farm workers;

(c) seasonal farm workers;

(d) other farm workers;

(e) actual tillers or occupants of public lands;

(f) collective or cooperatives of the above beneficiaries; and

(g) others directly working on the land.

Provided, however, That the children of landowners who are qualified under Section 6 of this Act shall be given preference in the distribution of the land of their parents; and: Provided, further, that actual tenant-tillers in the landholding shall not be ejected or removed therefrom.

Beneficiaries under Presidential Decree No. 27 who have culpably sold, disposed of, or abandoned their land are disqualified to become beneficiaries under their program.

The requirement of standing involves a party's right to present his case and to participate in the proceedings before the court. To have standing, a party must stand to be benefitted or injured by the judgment in the suit, or to be entitled to the avails of the suit;[47] he must have sustained, or will sustain, direct injury as a result of its enforcement.[48] Since the central question in this case involves the validity of the SDOA/SDP, those who stand to be benefited or injured by the Court's judgment on this question are necessarily real parties-in-interest.

The real parties-in-interest as reflected in the pleadings, are the following: (1) those who are signatories of the May 11, 1989 SDOA; and (2) those who are not signatories to the May 11, 1989 SDOA but, by its terms, are nevertheless entitled to its benefits. The SDOA included as its qualified beneficiaries those "farmworkers who appear in the annual payroll, inclusive of permanent and seasonal employees, who are regularly or periodically hired by the SECOND PARTY [HLI]."[49] It made no distinction between regular and seasonal farmworkers, and between regular and supervisory farmworkers. All that the SDOA required for inclusion as a beneficiary is that the farmworker appear in HLI's annual payroll, regardless of when he or she began working for HLI.

A basic qualification of a beneficiary shall be his willingness, aptitude and ability to cultivate and make land as productive as possible. The DAR shall adopt a system of monitoring the record or performance of each beneficiary, so that any beneficiary guilty of negligence or misuse of the land or any support extended to him shall forfeit his right to continue as such beneficiary. The DAR shall submit periodic reports on the performance of the beneficiaries to the PARC.

If, due to landowner's retention rights or to the number of tenants, lessees, or workers on the land, there is not enough land to accommodate any or some of them, they may be granted ownership of other lands available for distribution under this Act, at the option of the beneficiaries.

Farmers already in place and those not accommodated in the distribution of privately-owned lands will be given preferential rights in the distribution of lands from the public domain.

[47] RULES OF COURT, Rule 3, Section 2.

[48] *People v. Vera*, 65 Phil. 56, 89 (1937).

[49] *Rollo*, p. 149.

Thus, Rene Galang, who started his employment with HLI in 1990 after the SDOA was executed, also possesses standing to participate in this case, since he is considered a qualified beneficiary even if he was not an SDOA signatory like Julio Zuniga, Windsor Andaya and Noel Mallari. Although FARM is an organization created only after the present petition was filed with the Court, its members are qualified beneficiaries of the SDOA and, like Rene Galang, are also clothed with the requisite standing.

The Court cannot test a party's standing based on who should be considered qualified beneficiaries under Section 22 of the CARL, which, as HLI argued on the basis of our ruling in *Fortich*,[50] excludes seasonal workers. Section 22 of the CARL, in relation to the *Fortich* ruling, will find application only if the Court rules that the SDOA/SDP is illegal and confirms the compulsory coverage and distribution of *Hacienda Luisita* under the CARL. Before any such ruling is made, the application of a Section 22/*Fortich*-based standard of standing will not only be premature; it will also deny due process to those who qualify as beneficiaries under the SDOA/SDP but who may not qualify as such under the *Fortich* standard. Thus, HLI's arguments on this matter are irrelevant to the question of standing.

RCBC and LIPCO's intervention is permissible based on the standards provided under Section 1, Rule 19 of the Rules of Court:

> Section 1. *Who may intervene*. — **A person who has a legal interest in the matter in litigation**, or in the success of either of the parties, or an interest against both, or is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof may, with leave of court, be allowed to intervene in the action. The court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties, and whether or not the intervenor's rights may be fully protected in a separate proceeding. [Emphasis ours.]

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[50] *Supra* note 44.

Their interest in this case stems from being the purchasers of 300 hectares of HLI land, which the PARC included in its Notice of Compulsory Coverage. Thus, the Court's resolution of this case will directly affect their right to the purchased lands, as they stand to be stripped of their ownership and possession of these lands.

II. Constitutionality of stock distribution option under the CARL

In the exercise of the power of judicial review over a legislative act alleged to be unconstitutional, the Court must ensure that the constitutional issue meets the following essential requirements:

(1) there is an actual case or controversy;

(2) the constitutional question is raised at the earliest possible opportunity by a proper party or one with *locus standi*; and

(3) the issue of constitutionality must be the very *lis mota* of the case.[51]

I agree that the constitutional issue in the present case fails to comply with the *lis mota* requirement. The settled rule is that courts will refrain from ruling on the issue of constitutionality unless it is truly unavoidable and the issue lies at the core of, or is the core of, the dispute in the case;[52] In other words, the case cannot be resolved unless the constitutional question is passed upon.[53] Equally settled is the presumption of constitutionality that every law carries; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, not one that is doubtful, speculative or argumentative.[54]

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[51] *Francisco v. House of Representatives*, G.R. No. 160261, November 10, 2003, 415 SCRA 133.

[52] *Spouses Romualdez v. Commission on Elections*, G. R. No. 167011, April 30, 2008, 553 SCRA 370.

[53] See *Garcia v. Executive Secretary*, G.R. No. 157584, April 2, 2009, 583 SCRA 119.

[54] *Arceta v. Mangrobang*, G.R. No. 152895, June 15, 2004, 432 SCRA 136.

The present dispute is principally anchored on the alleged grave abuse of discretion that the PARC committed when it revoked HLI's SDP. All the other issues raised, such as the extent of the PARC's jurisdiction, the legality of the SDOA, and LIPCO's and RCBC's rights as transferees of portions of HLI's lands, originate from this determination. In my view (and as Justices Velasco and Sereno also posit), the Court can resolve these issues without having to delve into the constitutionality of the stock distribution option embodied in Section 31 of CARL. Contrary therefore to the Separate Opinion of Chief Justice Renato C. Corona, I see no compelling reason for this Court to consider the constitutional issue. This issue is likewise best left unresolved, given that the CARL has now been superseded by RA 9700[55] and the stock distribution option is no longer allowed by law; not only is a constitutional pronouncement not necessary as discussed above, but such pronouncement may even unsettle what to date are stable stock distribution relationships under this superseded law.

III. The PARC's power to revoke its previous approval of the SDP

I also maintain that the PARC's power and authority to approve the SDP under Section 31 of the CARL includes, by implication, the power to revoke this approval.

The PARC was created *via* Executive Order (EO) No. 229, which provides:

Section 18. *The Presidential Agrarian Reform Council (PARC).* To **coordinate the implementation of the CARP** and to ensure the timely and effective delivery of the necessary support services, there is hereby created the Presidential Agrarian Reform Council

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[55] This law, entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), extending the acquisition and distribution of all agricultural lands, instituting necessary reforms, amending for the purpose certain provisions of Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law of 1988, as amended, and appropriating funds therefore," amended the CARL by removing the stock distribution option as a mode of compliance with the agrarian reform program.

composed of the **President** as Chairman, and the Secretaries or Heads of the following agencies, as follows:

Department of Agrarian Reform	Vice Chairman
Department of Agriculture	Vice Chairman
Department of Environment and Natural Resources	Vice Chairman
Executive Secretary	Member
Department of Budget and Management	Member
Department of Finance	Member
Department of Justice	Member
Department of Labor and Employment	Member
Department of Local Government	Member
Department of Public Works and Highways	Member
Department of Trade and Industry	Member
Department of Transportation and Communications	Member
National Economic and Development Authority	Member
Land Bank of the Philippines	Member
Presidential Commission on Good Government	Member

The President shall appoint representatives of agrarian reform beneficiaries and affected landowners as members of PARC.

The DAR shall provide the Secretariat for the PARC and the Secretary of Agrarian Reform shall be the Director-General thereof.

The PARC shall formulate and/or <u>implement</u> the policies, rules and regulations necessary to implement each component of the CARP, and may authorize any of its members to formulate rules and regulations concerning aspects of agrarian reform falling within their area of responsibility.

Given this composition and assigned mission, with the President of the Philippines as its Chairperson and the various Department Secretaries as its Vice-Chairpersons, the PARC is undoubtedly

an administrative body whose level of authority and power is higher than that of the DAR Secretary.

The PARC's **authority to approve the SDP** is expressed in Section 10 of EO No. 229, which provides:

> Section 10. *Corporate Landowners*. Corporate landowners may give their workers and other qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the land assets bear in relation to the corporation's total assets, and grant additional compensation which may be used for this [these] purposes. **The approval by the PARC of a plan for such stock distribution, and its initial implementation, shall be deemed compliance with the land distribution requirements of the CARP**.

The CARL preserved the PARC's authority to approve the SDP in its Section 31, which states:

> Section 31. *Corporate Landowners.* — Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries, under such terms and conditions consistent with this Act, as they may agree upon, subject to confirmation by the DAR.
>
> Upon certification by the DAR, corporations owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to associations, with respect to their equity or participation.
>
> Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: *Provided*, That the following condition are complied with:
>
> (a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits,

the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

(b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;

(c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and

(d) Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or **the plan for such stock distribution approved by the PARC** within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.

As the PARC has the power and authority to approve the SDP, it also has, by implication, the power to revoke the approval of the plan unless this implied power is expressly, or by a contrary implication, withheld from it by law. This conclusion is consistent with the Court's ruling in *Francisco I. Chavez v. National Housing Authority, et al.*:[56]

Basic in administrative law is the doctrine that a government agency or office has express and implied powers based on its charter and other pertinent statutes. Express powers are those powers granted, allocated, and delegated to a government agency or office by express provisions of law. On the other hand, implied powers are those that can be inferred or are implicit in the wordings of the law or conferred by necessary or fair implication in the enabling act. In *Angara v. Electoral Commission*, the Court clarified and stressed that **when a general grant of power is conferred or duty enjoined, every particular power necessary for the exercise of the one or the**

[56] G.R. No. 164527, August 15, 2007, 530 SCRA 235, 295-296.

performance of the other is also conferred by necessary implication. It was also explicated that when the statute does not specify the particular method to be followed or used by a government agency in the exercise of the power vested in it by law, said agency has the authority to adopt any reasonable method to carry out its functions.

While the provision does not specify who has the authority to revoke the approval of the stock distribution plan, logic dictates that the PARC be the proper body to exercise this authority. If the approval was at the highest level (*i.e.*, at the level of the PARC), revocation cannot be at any other level; otherwise, the absurd situation of a lower level of authority revoking the action of a higher level will result.

In line with the power granted to the PARC and the DAR to issue rules and regulations to carry out the objectives of the CARL,[57] the DAR issued Administrative Order (AO) No. 10-1988 or the "Guidelines and Procedures for Corporate Landowners Desiring to Avail Themselves of the Stock Distribution Plan Under Section 31 of R.A. 6657 and Superseding Department of Agrarian Reform Administrative Order No. 4-1987." The pertinent provisions of the guidelines provide:

Section 10. *Disposition of Proposal* — **After the evaluation of the stock distribution plan** submitted by the corporate landowner-applicant to the Secretary of Agrarian Reform, he shall **forward the same with all the supporting documents to the Presidential Agrarian Reform Council (PARC),** through its Executive Committee, with his recommendation for final action.

Section 11. *Implementation — Monitoring of Plan* — The approved stock distribution plan shall be **implemented within three (3) months** from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded

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[57] Section 49 of the CARL states: "The PARC and the DAR shall have the power to issue rules and regulations, whether substantive or procedural, to carry out the objects and purposes of this Act. Said rules shall take effect ten (10) days after publication in two (2) national newspapers of general circulation."

in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the stock distribution plan.

Upon completion, the corporate landowner-applicant shall be issued a Certificate of Compliance. The Secretary of Agrarian Reform or his designated representatives shall strictly monitor the implementation to determine whether or not there has been compliance with the approved stock distribution plan as well as the requirements of the CARP. For this purpose, the corporate landowner-applicant shall make available its premises for ocular inspection, its personnel for interview, and its records for examination at normal business hours.

Section 12. ***Revocation of Certificate of Compliance*** — Non-compliance with any of the requirements of Section 31 of RA 6657, as implemented by this Implementing Guidelines shall be **grounds for the revocation of the Certificate of Compliance** issued to the corporate landowner-applicant.

Section 13. *Reservation Clause* — Nothing herein shall be construed as precluding the **PARC** from **making its own independent evaluation** and **assessment of the stock distribution plan** of the corporate landowner-applicant and in prescribing other requirements.

Thus, the corporate landowner is obliged under Section 11 of this AO to implement the SDP within three months after the plan is approved by the PARC. A Certificate of Compliance follows the execution of the SDP to confirm its compliance with statutory and regulatory requirements. Compliance, however, is not a one-time determination; even after the approval of the SDP, the Secretary of Agrarian Reform, or his designated representatives, is under the obligation to strictly monitor the implementation of the SDP to ensure continuing compliance with the statutory (the CARL) and regulatory (the AO) requirements.

Section 12 of the AO confirms that the Certificate of Compliance can still be revoked even after its issuance, if the corporate landowner is found violating the requirements of Section 31 of the CARL. If this authority is granted ***after*** the corporate landowner has been issued a Certificate of Compliance, with more reason should the approval of the SDP be subject to revocation ***prior*** to the issuance of a Certificate of Compliance.

At that prior point, the PARC has not even accepted and approved compliance with the SDP as legally satisfactory. While the rules do not expressly designate the PARC as the entity with the authority to revoke, the PARC nevertheless is granted the continuing authority, under Section 18 of EO No. 229, to implement the policies, rules and regulations necessary to implement each component of the CARP. This grant is a catch-all authority intended to cover all the implicit powers that the express grants do not specifically state, and must necessarily include the power of revocation.

IV. The SDP is null and void for being contrary to law

Along with my colleagues, I consider HLI's SDP/SDOA to be null and void because its terms are contrary to law. I specifically refer to two main points of invalidity. *First* is the "man days" method the SDP/SDOA adopted in computing the number of shares each FWB is entitled to get; and *second* is the extended period granted to HLI to complete the distribution of the 118,391,976.85 shares, which violates the compliance periods provided under Section 11 of AO No. 10-1988.

Under the SDOA/SDP, the qualified FWBs will receive, at the end of every fiscal year, HLI shares based on the number of days that they worked for HLI during the year. This scheme runs counter to Section 4 of the DAR AO No. 10-1988, which states:

> Section 4. Stock Distribution Plan. — The stock distribution plan submitted by the corporate-landowner applicant shall provide for the **distribution of an equal number of shares of stock** of the same class and value, with the same rights and features as all other shares, **to each of the qualified beneficiaries**. This distribution plan in all cases, shall be at least the minimum ration for purposes of compliance with Section 31 of RA 6657.
>
> On top of the minimum ration provided under Section 3 of this Implementing Guideline, corporate landowner-applicant may adopt additional stock distribution schemes taking into account factors such as rank, seniority, salary, position and other circumstances which may be deemed desirable as a matter of sound company policy.

The "man days" method of determining the shares to be distributed to each FWB is contrary to the mandate to distribute equal number of shares to each FWB, and is not saved by the prerogative of the landowner to adopt distribution schemes based on factors desirable as a matter of sound company policy. The "man days" method leaves it entirely to the unregulated will of HLI, as the employer, to determine the number of workers and their working hours, that in turn becomes the basis in computing the shares to be distributed to each worker. The workers earn shares depending on whether they were called to work under an uncertain work schedule that HLI wholly determines. Under this set-up, intervening events that interrupt work and that are wholly dictated by HLI, effectively lessen the shares of stocks that a worker earns. This is far from the part-ownership of the company at a given point in time that the CARL and its implementing rules envisioned.

The 30-year distribution period, on the other hand, violates the three month period that Section 11 of AO No. 10-1988 prescribes in the implementation of the distribution scheme:

> Section 11 Implementation — Monitoring of Plan — **The approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC** and **the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books** and submitted to the Securities and Exchange Commission (SEC) **within sixty (60) days from the said implementation** of the stock distribution plan.

Contrary to this provision, the HLI's SDP/SDOA authorized a slow incremental distribution of shares over a 30-year period. Thus, FWB participation, particularly over the early years, was minimal and the unearned and undistributed shares remained with HLI. This scheme totally runs counter to the concept of making the FWBs part-owners, through their stock participation, within the time that Section 11 requires for the implementation of the stock distribution scheme. Stated more bluntly, the FWBs largely remained farmers while the land supposedly subject to land reform remained with HLI.

These SDP provisions, among others, prejudiced the FWBs and denied them of their rights under the law. Consequently, PARC Resolution No. 2005-32-01 is legally correct in revoking the SDP of HLI.[58]

The recall/revocation of the SDP carried with it the revocation of the SDOA, since the two are essentially the same. The SDOA is the contract between the FWBs and the landowners (HLI/Tadeco) that was embodied and ***made the very core*** of the SDP — the proposal submitted by HLI for the PARC's approval as compliance with the CARL. The illegality that permeates the SDP (leading to PARC's decision to revoke it) therefore also extends to the SDOA. If we recognize that the SDP is different from the SDOA, as the *ponencia* suggests, inconsistency and absurdity would result.

a. Consequences of the Revocation of SDP/SDOA

The revocation of the SDP/SDOA carries two significant consequences.

The ***first*** is the compulsory coverage of HLI agricultural lands by the CARP, as the PARC ordered through its Notice of Coverage. This coverage should cover the whole 4,915.75 hectares of land subject of the SDOA, including the 500 hectares later sold to LIPCO, RCBC and the LRC, and the 80 hectares purchased by the government as part of the SCTEX. As discussed below, the implementation of this coverage should be subject to the validity of the subsequent dealings involving specific parcels of the covered land.

The ***second*** is the invalidity from the very beginning of the SDP/SDOA, both in its terms and in its implementation. Thus, **mutual restitution should take place**, *i.e.*, the parties are bound to return to each other what they received on account of the nullified SDP/SDOA. It is on this latter point that I diverge from the majority's ruling on the effects of the nullification of the SDP/SDOA.

These consequences are separately discussed below.

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[58] *Rollo*, p. 101.

b. The compulsory CARP coverage and extent of Notice of Coverage.

b. 1. Basis of the compulsory CARP coverage

Section 31 is clear and categorical on the consequence of the revocation – the agricultural land of the corporate owners or corporation shall be subject to compulsory coverage under the CARL. The DAR AO No. 10-1988 effectively defines the corporate land covered — the land actually devoted to agriculture — as this is the basis for the allocation of shares to FWBs. Thus, as discussed below, compulsory coverage upon the failure of the stock distribution plan shall extend to the whole of HLI's agricultural lands, subject only to exceptional exclusions that may be recognized.

b. 2. Exclusion from Notice of Coverage based on intervening developments

A seeming problem, in light of the intervening conversion to industrial use and the sale of 500 hectares of converted land to third parties, is the extent of actual implementation of PARC's Notice of Coverage.

As narrated above, HLI applied for the conversion to industrial use of 500 hectares of the original 4,915.75 that the SDOA covered. **Significantly, the application was made with the consent and approval of the FWBs, as expressed in their Manifestation of Support**.[59] That the landowner and/or the FWBs can request for conversion is a possibility that the law made allowance for. Section 65 of the CARL in this regard states:

> Section 65. Conversion of Lands. — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application, of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification

[59] *Supra* note 15.

or conversion of the land and its disposition; provided, that the beneficiary shall have fully paid its obligation.

The fact of conversion in the present case, however, is not a divisive issue between HLI and the FWBs as the latter consented to and accepted the conversion; they only question their share in the proceeds after the converted lands were sold to third parties. If at all, conversion as an issue rears its head between the PARC and HLI because of the intervening sale of the converted lands and the PARC's Notice of Coverage that, given the invalidity of the SDOA/SDP, should be effective on May 11, 1989 as discussed below. Even the PARC, however, is not in the position to question the fact of conversion as the PARC itself approved the conversion after full compliance with the CARL and the DAR's applicable regulations;[60] the PARC's question arises only because of its apparent view that compulsory CARP coverage has primacy over all dealings involving HLI agricultural lands.

In these lights, the validity of the transfer of the converted lands to LIPCO, RCBC, LRC (through Centennary) and SCTEX, depends on the validity of the transfers made and on how they are affected by the agrarian character and the FWB ownership of the transferred lands; the validity of the conversion is a given or is at least a non-material consideration.

As the undisputed facts show, the converted lands are titled properties that the purchasers LIPCO, RCBC and the government acquired in a series of documented and fully examined transactions. In these dealings, a significant consideration is the good faith of the purchasers who, in the usual course, can rely on the presented certificate of title, subject only to the requirements of good faith.[61]

A purchaser in good faith is one who buys the property of another without notice that some other person has a right to, or

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[60] See *Ros v. DAR*, G.R. No. 132477, August 31, 2005, 468 SCRA 471 and *Alarcon v. CA*, 453 Phil. 373 (2003).

[61] See *Republic v. Orfinada, Sr.*, G.R. No. 141145, November 12, 2004, citing *Legarda v. CA*, G.R. No. 94457, December 16, 1997, 280 SCRA 642, 679.

an interest in, such property and pays a full and fair price for the property at the time of purchase, or before he has notice of some other person's claim or interest in the property.[62] The law requires, on the part of the buyer, lack of notice of a defect in the title of the seller, and payment in full of the fair price at the time of the sale or prior to having notice of any defect in the seller's title.[63]

Every registered owner and every subsequent purchaser for value in good faith holds the title to the property free from all encumbrances except those noted in the certificate. Hence, a purchaser is not required to explore further than what the Torrens title on its face indicates in its inquiry for hidden defects or inchoate rights that may defeat his right to the property.[64] Every person dealing with registered land may safely rely on the correctness of the certificate of title issued, and the law does not oblige him to go behind the certificate to determine the condition of the property.[65]

To determine whether LIPCO was a purchaser in good faith, I examined the certificate of title of Centennary Holdings, Inc. at the time of LIPCO's purchase.[66] Notably, the only annotations and/or restrictions in the title were (a) the Secretary's Certificate in favor of Teresita Lopa and Shintaro Murai;[67] (b) the sale in

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[62] *Centeno v. Spouses Viray*, 440 Phil. 881, 885 (2002).

[63] *De Leon v. Ong*, G.R. No. 170405, February 2, 2010, 611 SCRA 381.

[64] *PNB v. Intermediate Appellate Court*, G.R. No. 71753, August 25, 1989, 176 SCRA 736.

[65] *Cabuhat v. Court of Appeals*, G.R. No. 122425, September 28, 2001, 366 SCRA 176.

[66] *Rollo*, pp. 3375-3376.

[67] E-38-18798; Kind: Secretary's Certificate in favor of Teresita C. Lopa. Cond: By virtue of which Teresita C. Lopa is hereby authorized and empowered to sign, execute and deliver whatever deeds, agreements and other documents as may be necessary to consummate the sale for and in behalf of the corporation, as per Doc. No. 271; p-56; bk. III; s-1997 of Not. Pub. A.M. Lopez.

Date of instrument – Nov. 11, 1997

Date of inscription – Aug. 3, 1998 at 8:20 a.m.

GUERRERO E. CAMPOS, Reg. of Deeds

favor of LIPCO for ₱750 million;[68] and (c) the conversion of the property from agricultural to industrial and residential use.[69] None of these annotations suggests any defect in Centennary's title, nor do they place potential buyers on notice that some other person had a claim or interest in the property.

While LIPCO may have known that the property it was purchasing was covered by an SDOA between HLI and its FWBs, the coverage, by itself, is not enough to constitute bad faith on LIPCO's part. The property LIPCO purchased was covered by a validly issued DAR Conversion Order, which served to assure LIPCO that the property it was purchasing had already been approved for sale and industrial development, and thus already lies **outside CARP coverage.** Reliance on the Conversion Order is strengthened by the numerous government issuances which all classified these lands as industrial land to be developed as a Special Economic Zone.[70]

E-38-18799; Kind: Secretary's Certificate in favor of Shintaro Murai. Cond: By virtue of which Shintaro Murai is hereby authorized to sign, execute and deliver the Deed of Absolute Sale and whatever deeds and agreements, and other documents, as may be necessary to consummate the said Deed of Absolute Sale for and in behalf of the corporation, as per Doc. No. 277; p-51; bk. III; s-1997 of Not. Pub. A.M. Lopez.

Date of instrument – Nov. 11, 1997

Date of inscription – Aug. 3, 1998 at 8:20 a.m.

[68] E-38-18800: Kind: Sale; in favor of LUISITA INDUSTRIAL PARK CORPORATION. Cond: This title is hereby cancelled by virtue of the aforementioned document and for the sum of (₱750,000,000.00) and in lieu thereof TCT 310986 is issued on page 186 Vol. T-1546 as per Doc. No. 22; p-6; bk. II; s-1998 of Not. Pub. E.C. Dela Merced Jr.

Date of instrument – Jul. 30, 1998

Date of inscription – Aug. 3, 1998 at 8:20 a.m.

[69] E-38-18805: Kind: Order. in favor of Hacienda Luisita, Incorporated, rep. by Mr. Pedro Cojuangco. Cond: By virtue of an order of DAR Quezon City, the herein property is hereby converted from Agricultural to Industrial and residential uses.

Date of instrument – Aug. 14, 1996

Date of inscription – Aug. 3, 1998 at 8:20 a.m.

[70] These government issuances include:

In the case of RCBC, LIPCO's certificates[71] covering the parcels transferred to RCBC through a *dacion en pago*, contained the following annotations: (a) the Deed of Restrictions;[72] (b) the

a. Resolution No. 392, dated December 11, 1996, of the Sanguniang Barangay of Municipality of Tarlac, recognizing LIPCO's plan to establish a 300 hectare industrial estate in the municipality of Tarlac (*Rollo*, Volume 3, p. 3377);

b. Board of Investments (BOI) Certificate of Registration No. 96-020 dated December 20, 1996, recognizing LIPCO as duly registered with the BOI (*Id.* at 3384);

c. Resolution No. 97-202 issued by the Philippine Economic Zone Authority (PEZA), approving LIPCO's application as a mixed economic zone, as well as proclaiming the 300 hectares as a special economic zone to be known as Luisita Industrial Park 2 (*Id.* at 3385-3388);

d. Certificate of Registration No. 00794 issued by the HLURB, recognizing the Luisita Industrial Park 2 project as an industrial subdivision (*Id.* at 3398); and

e. Presidential Proclamation No. 1207 issued by President Ramos, declaring the 300 hectares of the converted industrial land as a Special Economic Zone (*Id.* at 3400-3402).

[71] *Rollo*, pp. 3475-3482.

[72] Both TCT Nos. 365800 and 365801 contained the following annotation:

-conditions-

1. USE AND OCCUPANCY

1.1 The Property and its improvements shall be used solely as an industrial estate for non-polluting, general, industrial and manufacturing activities provided that such activities are confined within a [the] buildings and do not pollute, contaminate or contribute noxious fumes, smoke or dust, offensive odor, disturbing noise or vibration, and excessive heat to the surrounding environment nor contain a hazard potential due to the nature of the products, materials or processes involved, nor discharge any and all other pollutants and substances which may contaminate the air, the water, the soil and the environment.

1.2 Without the prior written consent of Hacienda Luisita, Inc., the Property or any part thereof shall not be used as an open field depot or dump for depositing and/or sale of unreconditioned, unassembled and/or unremodelled surplus vehicles, machineries, equipment or scrap and or any other unreconditioned or unprocessed second hand materials, goods or items, dormitory or for residential purposes, vegetables/fruit plantation, experimental farms such as fishponds, and the establishment of residential projects, commercial establishments including hotel, shopping mall, retail establishment, food stores, and other uses other than mentioned in 1.1 above.

Secretary's Certificate in favor of Koji Komai and Kyosuke Nori;[73] and (c) the Real Estate Mortgage in favor of RCBC, for ₱300 million.[74] Again, nothing in these annotations would lead

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2. SEWER — The developer is required to build a water and sewerage treatment plant for both domestic and industrial water for factories of the industrial park.

3. DRAINAGE — all drainage system shall comply with the drainage mater plan of Hacienda Luisita, Inc. Storm water shall drain into existing drainage main lines. All industrial or factory waste or by products harmful to living matters, having an obnoxious odor, and/or detrimental to the proper maintenance of the river, should first be primarily treated according to government regulations before.

4. GAS STATIONS/FUEL PUMPS — No gas stations or fuel pumps to service the general public shall be constructed, operated or established within the industrial park.

5. ADVERTISING SIGNS — Advertising signs shall conform with the aesthetic appearance of the estate. It shall be limited to those necessary for the business carried on within the property and shall be the least obnoxious in character and design.

6. POWER PLANT — No electric generating power plant shall be established on the Property without the prior written consent of Hacienda Luisita, Inc., which consent shall not be unreasonably withheld:

7. TERM AND ENFORCEMENT OF RESTRICTIONS — The restriction, easements and reservation mentioned hereinabove shall be valid and run with the land for a period of 50 years from 31 Jan. 1988 and compliance thereto may be enforced by court action either by Hacienda Luisita, Inc. or by any property owner in the industrial estate or both, as well as by their respective successors and assigns, provided, however, that public utility or service entities may enforce their easement rights as provided for herein independently of any other party or parties.

[73] E-42-3728; Kind: SECRETARY'S CERTIFICATE. in favor of KOJI KOMAI and KYOSUKE HORI. Cond. By virtue of which, KOJI KOMAI and KYOSUKE HORI are hereby authorized and empowered to sign, for and in behalf of the Corporation and subject to all other conditions specified in Doc. No. 391; p-80; bk. III; s-1999 of Not. Pub. EUFROCINO C. DELA MERCED, JR. of Makati City, M.M.

Date of instrument – Aug. 19, 1999

Date of inscription – Feb. 26, 2002 at 9:20 a.m.

[74] E-42-3729; Kind: REAL ESTATE MORTGAGE (REM) In favor of RIZAL COMMERCIAL BANKING CORPORATION (RCBC). Cond. The property herein described is hereby Mortgaged to guarantee the payment for

possible buyers or transferees like RCBC to question LIPCO's right, as owner, to transfer these properties.

I likewise find that RCBC sufficiently demonstrated extraordinary diligence in purchasing part of the acquired lands from LIPCO. Before it acquired these lands, RCBC reviewed and inspected LIPCO's certificates of title and other relevant documents to trace the origin of LIPCO's titles to ascertain the nature of the property.[75] It likewise conducted ocular inspections on the property, and confirmed that the property was not only in LIPCO's possession; more than this, nobody was occupying the property.[76] As with LIPCO, the fact that the property had already been converted by the DAR assured RCBC that the property it was purchasing was no longer agricultural land and was, therefore, outside CARP coverage.

Aside from the good faith both LIPCO and RCBC demonstrated, they paid the full and fair price for their purchases. LIPCO paid Centennary the total amount of ₱750 million for the 300 hectares of land.[77] Likewise, RCBC received approximately 184 hectares of land from LIPCO in exchange for LIPCO's debt amounting to ₱431.7 million.[78]

A critical point in these transfers, in light of the invalidity of the SDOA/SDP, is the consent of the real owners of the transferred properties — the respondent FWBs in the present case. As previously mentioned, their main objection does not relate to the conversion of the 500 hectares to industrial use; neither is

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the sum of THREE HUNDRED MILLION (₱300,000,000.00) Pesos, Phil. Currency with interest thereon and subject to all other conditions specified in Doc. No. 254; p-52; bk. 18; s-1998 of Not. Pub. JEROME O. SARTE, of Makati City, M.M.

Date of instrument – October 26, 1998

Date of inscription – Feb. 26, 2002 at 9:20 a.m.

[75] *Rollo*, p. 4262.

[76] *Id.* at 4264.

[77] *Id.* at 1499-1509.

[78] *Id.* at 1523-1527.

it on the transfer of the property to LIPCO and RCBC. The thrusts of their objections are clear from a survey of the pleadings. What the private respondents strongly object to is the share they received from the transfers; they argue that they are entitled to more than the trifling 3% of the proceeds of the sale that HLI gave them. Thus, the respondent FWBs — as the owners of the converted lands at the time of their transfers because of the invalidity of the SDOA/SDP and the compulsory CARP coverage of the lands these instruments cover — at the very least gave their consent and ratified the transfers made. At this point, they only have to receive the price due them on the transactions so that all the elements of the sale, viewed as a contract, can be complete.

Not to be forgotten as an important side consideration, in examining the transfers to LIPCO and RCBC from the point of view of agrarian reform, is the acquired lands' present state of development; they have already been partially developed into an industrial estate — significant portions have been covered by cemented roads, and permanent structures have been erected.[79] As RCBC convincingly argued, it would not be practicable to raze down these permanent structure, and rehabilitate partially developed non-agricultural land so that it can be used for agricultural purposes. As a colleague observed, the DAR Conversion Order[80] itself notes that the converted lands have no source of irrigation and no new irrigation facilities, and would have to be developed in these regards in order to be viable for farming.

Thus, **I totally disagree with the PARC's ruling that the portions sold to RCBC and LIPCO should continue to be included in the CARP's compulsory coverage and should simply be turned over to the qualified beneficiaries.** Although these lands fell under compulsory CARP coverage even before their sale to RCBC and LIPCO, the intervening events that gave

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[79] See RCBC's Memorandum dated September 23, 2010, p. 85, and LIPCO's Memorandum dated September 23, 2010, p. 41.

[80] *Rollo*, pp. 656-657.

rise to legally valid transactions cannot be disregarded in the name of agrarian reform. Whatever remaining objections there may now be (in this case, the sharing of the proceeds of the sales) are simply disputes that do not affect the validity of the underlying transactions, and can be resolved as issues in the present case.

The land transferred to the government, for use as part of the SCTEX has not at all been discussed in the proceedings of the case[81] and does not appear to have been covered by any conversion order. Presumably, however, the transfer was pursuant to the government's exercise of the power of eminent domain — **an overriding act of government** that carries the presumption of regularity unless otherwise proven. I mention this aspect of the HLI properties because of its potential materiality. In the exercise of the power of eminent domain, the government must necessarily pay just compensation to the owner. The FWBs, as owners at the time of the expropriation because of the land's prior compulsory coverage under the CARP, should receive the full amount that the government paid.

The remaining 200 hectares (of the original 500 hectares converted from agricultural to industrial use with the DAR's approval) appear to be a big gaping black hole in the attendant facts of this case. They appear to have been sold by HLI to Luisita Realty.[82] The latter, however, did not intervene in this case and likewise did not assail PARC Resolution No. 2005-32-01, or the DAR's Notice of Coverage order. On the one hand, this silence and omission may be argued to mean acquiescence with the PARC decision to place the land under the compulsory CARP coverage. On the other hand, the sale to Luisita Realty is part and parcel of the series of transactions that, for the reasons given above, cannot and should not now be questioned if Luisita Realty is similarly situated as LIPCO and RCBC.

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[81] Although HLI asserts that it distributed 3% of the ₱80 Million that the government paid for the land used for the SCTEX.

[82] *Rollo*, Volume 3, pp. 3753-3758.

I opt for the latter view and for giving LRC the full opportunity to present its case before the DAR at the implementation stage of this Decision. I reason out that the failure of Luisita Realty to actively intervene at the PARC level and before this Court does not really affect the intrinsic validity of the transfer made in its favor if indeed it is similarly situated as LIPCO and RCBC. Accordingly, a definitive ruling on the transfer of the 200 hectares to Luisita Realty is now premature to make, and should be referred to the DAR for its determination.

b.3. HLI is entitled to just compensation based on the covered land's 1989 value.

Since the land is subject to compulsory coverage under the CARL, **HLI is entitled to just compensation**. For purposes of just compensation, the taking should be reckoned not from the Court or the PARC's declaration of nullity of the SDP, but from May 11, 1989 — when the invalid SDOA/SDP was executed for purposes of compliance with the CARL's requirements.

To repeat, **May 11, 1989** is the point in time when HLI complied with its obligation under the CARL as a corporate landowner, through the stock distribution mode of compliance.[83] This is the point, too, when the parties themselves determined — albeit under a contract that is null and void, but within the period of coverage that the CARL required and pursuant to the terms of what this law allowed — that compliance with the CARL should take place. From the eminent domain perspective, this is the point when the deemed "taking" of the land, for agrarian reform purposes, should have taken place if the compulsory coverage and direct distribution of lands had been the compliance route taken. As the chosen mode of compliance was declared a nullity, the alternative compulsory coverage (that the SDOA was intended to replace) and the accompanying "taking" should thus be reckoned from May 11, 1989.

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[83] Section 31 of the CARL provides: x x x Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act.

The FWBs should, therefore, be considered as entitled to the ownership of the land beginning May 11, 1989, although HLI's possession and control, *as an undisputed reality independently of the SDOA*, continue up to the time of the PARC decision (which we hereby affirm with modification) is implemented. The DAR, as the implementing agency on agrarian reform cases, shall determine the amount of just compensation due HLI, computed from May 11, 1989, and shall likewise be tasked with the adjustment of the parties' financial relationships flowing from their agrarian relations and from the intervening events that followed the voided SDOA. In the process of adjusting and settling these claims, the parties are encouraged to employ mediation and conciliation techniques, with DAR facilitating the proceedings.

In determining just compensation, the DAR should find guidance from Section 17 of the CARL, which states:

> Section 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Lest the matter of interest on the compensation due be a delaying feature of the implementation, I maintain that although HLI is entitled to just compensation based on the land's value in 1989, it cannot be awarded any interest.

Jurisprudence holds that when property is taken for public use before compensation is deposited with the court having jurisdiction over the case, the final compensation must include interests on its just value, to be computed from the time the property is taken up to the time compensation is actually paid or deposited with the court.[84]

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[84] *Apo Fruits Corporation v. Land Bank of the Philippines*, G.R. No. 164195, October 12, 2010, citing *Republic v. Court of Appeals*, G.R. No. 146587, July 2, 2002, 383 SCRA 611.

In the present case, HLI never lost possession and control of the land under the terms of the SDOA. This is an actual and corporate reality (not simply a consequence of the void SDOA) that the Court cannot ignore. It is only upon the implementation of this Court's decision, partially affirming PARC Resolution No. 2005-32-01 (placing HLI lands under compulsory coverage of the land acquisition scheme of the CARL), that HLI will be deprived of its possession. Thus, no interest can be due from the just compensation that the DAR shall determine. On the contrary, and as discussed below, HLI should pay rentals to the FWBs for its continued possession and control of the land from May 11, 1989 until its turn over.

b.4. The qualified FWBs are entitled to actual possession of land except the lands legally transferred to LIPCO, RCBC, and the government

The land subject to agrarian reform coverage under the terms of the CARL, as ordered by the DAR and confirmed by the PARC, covers the entire 4,915.75 hectares of agricultural land subject of the SDOA, including the 300 hectares later sold to LIPCO and RCBC, the 200 hectares sold to Luisita Realty, and the 80 hectares purchased by the government to form part of the SCTEX. ***However, the FWB ownership, based on agrarian reform coverage, should yield to the sale and transfer of the acquired lands — the 380 hectares sold — since these were validly acquired by LIPCO, RCBC and SCTEX, as discussed above.***[85]

Since the sale and transfer of these acquired lands came after compulsory CARP coverage had taken place, **the FWBs are entitled to be paid for the 300 hectares of land transferred to LIPCO based on its value in 1989**, not on the ₱750 million selling price paid by LIPCO to HLI as proposed by the *ponencia*. This outcome recognizes the reality that the value of these lands

[85] With respect to the 80 hectares acquired for the SCTEX, note that these were acquired by the government so that the acquisition carries the presumption of regularity.

increased due to the improvements introduced by HLI, specifically HLI's move to have these portions reclassified as industrial land while they were under its possession.[86] Thus, unless it is proven that the ₱750 million is equivalent to the value of the land as of May 11, 1989 and excludes the value of any improvements that may have been introduced by HLI, I maintain that the land's 1989 value, as determined by the DAR, should be the price paid to the FWBs for the lands transferred to LIPCO and RCBC.

On the other hand, **the FWBs are entitled to be paid the full amount of just compensation that HLI received from the government for the 80 hectares of expropriated land forming the SCTEX highway**. What was transferred in this case was a portion of the HLI property that was not covered by any conversion order. The transfer, too, came after compulsory CARP coverage had taken place and without any significant intervention from HLI. Thus, the whole of the just compensation paid by the government should accrue solely to the FWBs as owners.

I note that complications may arise in adjusting the parties' relationships with respect to the sale of the acquired lands, as another party — the Land Bank of the Philippines — enters the picture as the entity that advances the payment of lands distributed to FWBs under land reform.[87] The DAR, as the agency tasked with the valuation of the CARL-covered lands and the general implementation of land reform, must take the interests of three parties into consideration. For purposes of this adjustment, the DAR should apply ***the principles of set-off or compensation*** whenever applicable,[88] based on the rulings, guidelines and parameters of the Court's decision.

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[86] *Rollo*, pp. 651-664.

[87] Section 64 of the CARL provides:

Section 64. *Financial Intermediary for the* CARP. — The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall ensure that the social justice objectives of the CARP shall enjoy a preference among its priorities.

[88] Legal compensation is grounded on the Civil Code of the Philippines, the pertinent provisions of which are quoted below:

b.5. HLI must pay the qualified FWBs yearly rent for the use of the land from 1989

Since land reform coverage and the right to the transfer of the CARL-covered lands accrued to the FWBs as of May 11, 1989, **HLI — which continued to possess and to control the covered land — should pay the qualified FWBs yearly rental** for the use and possession of the covered land up to the time HLI surrenders possession and control over these lands.[89] As a

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Article 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

Article 1279. In order that compensation may be proper, it is necessary:

(1)That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2)That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3)That the two debts be due;

(4)That they be liquidated and demandable;

(5)That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.

[89] Art. 448. **The owner of the land on which anything has been built, sown or planted in good faith, shall have the right** to appropriate as his own the works, sowing or planting, **after payment of the indemnity provided for in Articles 546** and 548, **or to oblige the one who built or planted to pay the price of the land,** and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity.

The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof. (361a)

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Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, **the person who has defeated him in the possession having the option** of refunding the amount of the expenses or **of paying the increase in value which the thing may have acquired by reason thereof**.

detail of land reform implementation, the authority to determine the appropriate rentals belongs to the DAR, using established norms and standards for the purpose. Proper adjustment, of course, should be made for the sale of the acquired lands to LIPCO and to the government as no rentals can be due for these portions after their sale.

The *ponencia* objects to the imposition of rental fee on HLI:

> [T]he income earned by the corporation from its possession and use of the land ultimately redounded to the benefit of the FWBs based on its business operations in the form of salaries, benefits voluntarily granted by HLI and other fringe benefits under the CBA. There would be double compensation if HLI is still required to pay rent for the use of the land in question.[90]

The objection's logic, unfortunately, is flawed. That the FWBs, as owners of the land, are entitled to rent for HLI's possession and use does not preclude them from receiving salaries and benefits for work they performed on the land for HLI. To put it simply, the FWBs are entitled to the rent as owners of the land, and to the salaries and benefits as employees of HLI which had control and possession of the land and which conducted business operations based on the control and possession it enjoyed.

Parenthetically and considering the lapse of more than 10 years from the "taking" of the *Hacienda Luisita*, I bring to the parties' attention Section 27 of the CARL which authorizes the FWBs to sell the lands acquired by them under the CARP:

> SEC. 27. *Transferability of Awarded Lands*. — Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, **or to the government, or to the LBP**, or to other qualified beneficiaries for a period of ten (10) years: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the *barangay*

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[90] J. Velasco's Reply, pp. 4-5.

where the land is situated. The Provincial Agrarian Coordinating Committee (PARCCOM), as herein provided, shall, in turn, be given due notice thereof by the BARC.

If the land has not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land.

Under this provision, the qualified FWBs who are no longer interested in owning their proportionate share of the land may opt to sell it to LBP, who in turn can sell it to HLI and LRC, in order not to disrupt their existing operations. The Court leaves it to the parties to avail of Section 27 in the process of adjusting and settling their claims.

b.6. The DAR must identify the qualified FWBs

As a last point on compulsory CARP coverage, the beneficiaries who deserve to participate in the distribution of HLI land should be those qualified as of May 11, 1989 under the standards specified by Section 22 of the CARL, which provides:

Qualified Beneficiaries. — The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority:

(a) agricultural lessees and share tenants;
(b) regular farm workers;
(c) seasonal farm workers;
(d) other farm workers;
(e) actual tillers or occupants of public lands;
(f) collectives or cooperatives of the above beneficiaries; and
(g) others directly working on the land.

This question is for the DAR to resolve and is without prejudice to agreements the HLI and the FWBs may arrive at before the DAR. As a starting point, the DAR should use the list of qualified FWBs that Tadeco applied in 1989 when it sought the approval of its SDP.

c. Consequences of SDOA/SDP Invalidity.

c.1. The Operative Fact Doctrine is not applicable

While the *ponencia* affirms the revocation of the SDP, it declares that it "cannot close its eyes to certain '**operative facts**' that had occurred in the interim [the period between PARC's approval of the SDP up to its revocation]. x x x the revocation must, however, give way to the right of the original 6,296 qualified FWBs to choose whether they want to remain as HLI stockholders or not. The Court cannot turn a blind eye to the fact that in 1989, 93% of the FWBs agreed to the SDOA (also styled as the MOA) which became the basis of the SDP approved by PARC x x x." The *ponencia* justifies the application of the operative fact doctrine, "since the operative fact principle applies to a law or an **executive action**, the application of the doctrine to the [nullification of] PARC Resolution No. 89-12-2 which is an executive action is correct."[91]

The *ponencia's* view proceeds from a misinterpretation of the term "executive action" to which the operative fact doctrine may be applied.[92]

The operative fact doctrine applies in considering the effects of a **declaration of unconstitutionality of a *statute* or a rule issued by the Executive Department that is accorded the same status as a statute.** The "executive action," in short, refers to those issuances promulgated by the Executive Department

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[91] Justice Presbitero J. Velasco, Jr.'s Reply to Separate Opinion of Chief Justice Renato Corona, Reflections (Concurring and Dissenting) of Justice Arturo D. Brion, and Reflections of Justice Maria Lourdes P.A. Serreno, p. 4.

[92] See *Francisco I. Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007, 530 SCRA 235; *De Agbayani v. Philippine National Bank*, No. L-23127, April 29, 1971, 38 SCRA 429.

pursuant to their quasi-legislative or rule-making powers. Its meaning cannot be expanded to cover just about any act performed by the Executive Department, as that would be to negate the rationale behind the doctrine.

Aside from being a principle of equity, the Court is also keenly aware that an underlying reason for the application of the operative fact doctrine is the presumption of constitutionality that statutes carry. Rules and regulations promulgated in pursuance of the authority conferred upon the administrative agency by law, partake of the nature of a statute and similarly enjoy the presumption of constitutionality.[93] Thus, it is only to this kind of executive action that the operative fact doctrine can apply.[94]

The SDOA/SDP is neither a statute nor an executive issuance but, as mentioned, is a contract between the FWBs and the landowners. **A contract stands on a different plane than a statute or an executive issuance. When a contract is contrary to law, it is deemed void *ab initio*.** It produces no legal effects whatsoever, in accordance with the principle *quo nullum est nullum producit effectum*.[95] Contracts do not carry any presumption of constitutionality or legality that those observing the law rely upon. For this reason, the operative fact doctrine applies only to a declaration of unconstitutionality of a statute or an executive rulemaking issuance, conferring legitimacy upon past acts or omissions done in reliance thereof prior to the

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[93] Ruben E. Agpalo, *Administrative Law, Law on Public Officers and Election Law* (2005 ed.), p. 57, citing *People v. Maceren*, 79 SCRA 450 (1977).

[94] Hardly was there an instance that the Court applied the operative fact doctrine in considering the effects of nullifying an executive act done not pursuant to the exercise of quasi-legislative power. Majority of the cases found the doctrine applicable in considering the effects of a declaration of unconstitutionality of a statute or an administrative issuance. See the cases of *Corominas, Jr. v. Labor Standards Commission*, No. L-14837, June 30, 1961, 2 SCRA 721; *Municipality of Malabang, Lanao del Sur, et al. v. Benito, et al.*, G.R. No. L-28113, March 29, 1969, 27 SCRA 533; and *De Agbayani v. Philippine National Bank, supra* note 40.

[95] 3 Castan, 7th ed., p. 409, as cited in D. Jurado, *Comments and Jurisprudence on Obligations and Contracts* (2002 ed.), p. 570.

declaration of its invalidity;[96] the statute or the executive issuance, before its invalidity, was an operative fact to which legal consequences attached.

To extend this same principle to an unconstitutional or illegal contract would be to invite chaos into our legal system. It will make the parties a law unto themselves, allowing them to enter into contracts whose effects will anyway be recognized as legal even if the contracts are subsequently voided by the courts. From this perspective, the operative fact doctrine that applies to unconstitutional statutes is clearly not relevant to the present case.

Furthermore, I see no reason to allow the FWBs to remain as stockholders of HLI; maintaining that stock ownership goes against the CARL's declared policy of making the welfare of the farmers and the farmworker the highest consideration, not to mention that the direct constitutional mandate is land ownership by farmers-tillers, not stock ownership in a landowning corporation. To remain as stockholders of an almost-bankrupt corporation certainly will not afford the FWBs the "opportunity to enhance their dignity and improve the quality of their lives."[97] By the HLI's own admission, it shut down its operations in 2004; its audited financial statements as of December 31, 2007 and December 31, 2008 reflect a capital deficiency of ₱1.1 billion and ₱1.63 billion, respectively.

c.2. FWBs must return to HLI the benefits they actually received by virtue of the SDOA

The nullity of a contract goes into its very existence, and the parties to it must generally revert back to their respective situations prior to its execution; restitution is, therefore, in order. **With the SDP being void and without effect, the FWBs should return everything they are proven to have received pursuant to the terms of the SDOA/SDP,** and these include:

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[96] See *Chavez v. National Housing Authority*, G.R. No. 164527, August 15, 2007, 530 SCRA 235, 333, citing *City of Makati v. Civil Service Commission*, G.R. No. 131392, February 6, 2002, 376 SCRA 248, 257.

[97] CARL, Section 2 – *Declaration of Principles and Policies*.

1. the 59 million shares of stock of HLI distributed for free;
2. the ₱150 million representing 3% of the gross sales of the production of the agricultural lands;
3. the ₱37.5 million representing 3% of the proceeds from the sale of the 500 hectares of agricultural land (including what may have been received from the expropriation by government of the land used for SCTEX); and
4. the 240 sq. m. homelots distributed for free to each of the 3,274 families of FWBs.[98]

I observe that these are grants that HLI claimed, but have not proven, to have been fully received by the grantees; the evidence on record fails to show that all the FWBs under the SDOA equally received their allotted shares.

During the oral arguments on August 18, 2010, the Court instructed Atty. Gener Asuncion of HLI to submit proof that: (a) HLI gave the 3% share in HLI's total gross sales of the products of the land that the FWBs were entitled to, from 1989 up to 2004, when HLI ceased operations; and (b) HLI distributed the home lots to the FWBs. The records do not show any compliance with the Court's directive as HLI failed to submit any document proving compliance. At most, the records only contain the "Hacienda Luisita, Inc. Salaries, Benefits and Credit Privileges (in Thousand Pesos) Since the Stock Option was Approved by PARC/CARP,"[99] which provided that HLI gave the FWBs a total of ₱150 million as the 3% production share from 1989 to 2005.

Weighing the findings in the DAR Memorandum, dated September 30, 2005, (as affirmed by the PARC) that HLI only *partially* complied with its obligation to provide the FWBs with the 3% production share, against HLI's self-serving allegation that it fully complied with this obligation, I find insufficient basis to conclude (as the *ponencia* does) that "HLI had complied

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[98] *Rollo*, pp. 3694-3695.

[99] *Id.* at 3760-3761.

substantially with this SDOA undertaking and the conversion order."[100]

No substantial proof likewise exists that the FWBs who qualified under the SDOA, received the home lots that HLI claims it distributed. In the same manner, although HLI alleged that it also distributed 3% of the ₱80 million paid for the 80 hectares of land used by the SCTEX complex, no evidence in the records supports this assertion.

All these are aspects of implementation that are up to the DAR to ascertain if the Court will decide on ***starting with a clean slate*** reckoned from 1989 by decreeing that compulsory CARP coverage should start at that point in time, and proceeding to adjust the relations of the parties with due regard to the events that intervened. A consideration starting from a clean slate requires the accounting and restitution of what the parties received, or are due to receive, from one another.

I point out the above deficiencies as they involve factual questions that will be material in the clean slate approach I mentioned above. I point out, however, that whatever restitutions may have to be made in a ***clean slate approach***, the FWBs who worked for HLI should retain the ₱3 billion given to them as salaries and wages, and any other benefit they may have received as employees of HLI. They received these sums as wages and compensation earned for services rendered, and these are no longer subject to question.

V. Conclusion

For the foregoing reasons, I vote to **DENY** the petitioner Hacienda Luisita, Inc.'s petition, and **AFFIRM** public respondent PARC's Resolution No. 2005-32-01 revoking the SDP, as well as its Resolution No. 2006-34-01 denying the petitioner's motion for reconsideration.

The decision to subject the land to compulsory agrarian reform coverage should be **AFFIRMED**, with the **MODIFICATION**

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[100] *Ponencia*, p. 63.

that while the acquired lands were included by the public respondent Department of Agrarian Reform in its Notice of Compulsory Coverage, the purchase by the petitioners-intervenors, as well as the portion of land acquired for the SCTEX complex, should be recognized as valid and effective. I make no conclusion with respect to the transfer of 200 hectares to Luisita Realty, Inc., but I recognize that the validity of the transfer can still be proven, if Luisita Realty, Inc. so desires, before the DAR. Otherwise, the 200 hectares should be subject to compulsory CARP coverage.

VI. ORDERS AND DIRECTIVES

I. TO THE DEPARTMENT OF AGRARIAN REFORM

The public respondent Department of Agrarian Reform is hereby **ORDERED** to implement the Notice of Compulsory Coverage as soon as possible and to monitor the land distribution to ensure the equitable distribution of the land to the qualified farmworkers-beneficiaries. In this regard, it is **ORDERED** to:

a) determine the amount of just compensation that the petitioner Hacienda Luisita, Inc. is entitled to for the 4,915.75 hectares of *Hacienda Luisita*, based on its value on May 11, 1989;

b) determine the amount of yearly rentals that petitioner Hacienda Luisita, Inc. must pay the qualified farmworkers-beneficiaries, for the use and possession of the land from 1989, until possession is officially turned over to the Department of Agrarian Reform for distribution (with due adjustment for the portions sold to Luisita Industrial Park Corporation, Rizal Commercial Banking Corporation and the government for the Subic-Clark-Tarlac Expressway);

c) identify the farmworkers-beneficiaries who are qualified to receive land under the compulsory CARP coverage of the agricultural land of Hacienda Luisita, Inc., and the benefits and awards under this Decision;

d) determine the benefits under the void Stock Distribution Option Agreement/Stock Distribution Plan that the

qualified farmworkers-beneficiaries actually received from Hacienda Luisita, Inc.;

e) settle the distribution of the proceeds of the sale of the parcels of land sold to the Luisita Industrial Park Corporation and Rizal Commercial Banking Corporation, with the qualified farmworkers-beneficiaries participating to the extent of the value of these parcels of land as of May 11, 1989;

f) settle the distribution of the proceeds of the sale of the expropriated land to the government for the Subic-Clark-Tarlac Expressway, with the qualified farmworkers-beneficiaries entitled to all the proceeds that Hacienda Luisita, Inc. received for this transaction;

g) settle the claims and obligations arising from the Court's Decision, taking into account that the Land Bank of the Philippines is the party mandated by law to advance the payment of the land taken for agrarian reform purposes; and

h) provide the Luisita Realty, Inc. the opportunity to present evidence, with notice to all the parties to this case, to prove the validity of the transfer of 200 hectares of converted land by Hacienda Luisita, Inc.

In adjusting the parties' rights, claims and obligations to one another based on the rulings, guidelines and parameters of this Court's Decision, the Department of Agrarian Reform shall take advantage of the principle of set-off or compensation under the Civil Code of the Philippines, whenever applicable; shall employ mediation and conciliation techniques, whenever possible; shall apply Section 27 of the CARL, if possible; and shall cause the least disturbance to the *status quo*, particularly in the restitution of the home lots previously distributed under the nullified Stock Distribution Option Agreement/Stock Distribution Plan.

The Department of Agrarian Reform shall submit quarterly reports of its implementation efforts to this Court starting at the end of the second quarter after the finality of the Court's Decision, until the case is considered fully closed and terminated.

II. TO THE QUALIFIED FWBs UNDER THE VOIDED SDOA

Those who qualified as farmworkers-beneficiaries under the nullified Stock Distribution Option Agreement/Stock Distribution Plan and who, accordingly, received shares of stocks and benefits under this Agreement/Plan are **ORDERED** to return, the following for purposes of accounting, compensation, or off-setting with amounts due from HLI, in accordance with the DAR's final implementation resolution:

a) the 59 million shares of stock of the petitioner Hacienda Luisita, Inc.; otherwise, these shares of stocks can simply be considered cancelled or reverted back to Hacienda Luisita, Inc.;

b) the ₱150 million, representing 3% of the gross sales of the production of the agricultural lands;

c) the ₱37.5 million, representing 3% of the proceeds from the sale of the 300 hectares of agricultural land; and

d) the 240 sq. m. home lots distributed for free to each of the 3,274 families of the farmworkers-beneficiaries.

III. TO HACIENDA LUISITA, INC.

The petitioner Hacienda Luisita, Inc. is **ORDERED** to:

a) surrender possession of the 4,535.75 hectares of land subject to compulsory coverage under RA 6657, to the Department of Agrarian Reform (*i.e.*, including the 200 hectares transferred to Luisita Realty that the Department of Agrarian Reform /Presidential Agrarian Reform Council did not recognize), subject to the opportunity granted under this Decision to Luisita Realty Corporation to prove its ownership.

b) pay the qualified farmworkers-beneficiaries, as determined by the Department of Agrarian Reform, the value of the 300 hectares of land transferred to Luisita Industrial Park Corporation and Rizal Commercial Banking Corporation, based on the May 11, 1989 value as determined by the Department of Agrarian Reform;

this same directive applies with respect to the 200 hectares transferred to Luisita Realty, Inc., when and if the Department of Agrarian Reform finds the sale of the property valid; otherwise, the 200 hectares shall fall under the PARC's Notice of Coverage;

c) pay the qualified farmworkers-beneficiaries, as determined by the Department of Agrarian Reform, the just compensation it received from the government for the 80 hectares of expropriated land used for the Subic-Clark-Tarlac Expressway; and

d) pay the qualified farmworkers-beneficiaries yearly rental for the use of the land (except for the portions already transferred to Luisita Industrial Park Corporation, Rizal Commercial Banking Corporation and Subic-Clark-Tarlac Expressway) from 1989 until the land is turned over to the Department of Agrarian Reform, based on the value as determined by the Department of Agrarian Reform.

They are entitled to **RETAIN** the salaries, wages and other benefits they received as employees of the petitioner Hacienda Luisita, Inc.

Submitted for the *En Banc*'s consideration.

SEPARATE OPINION

MENDOZA, *J.*:

I fully concur with the well-explained position of Chief Justice Renato Corona that the Stock Distribution Plan *(SDP)* is unconstitutional as it is inconsistent with the basic concept of agrarian reform. Land reform entails land distribution to those who till the land. If there is no actual land distribution, there is no land reform.

Indeed, the distribution of shares of stock, not land, cannot be considered as compliance with the constitutional provision on agrarian reform. Section 31 of Republic Act *(R.A.)* No. 6657, which allows stock distribution, directly and explicitly contravenes

Section 4, Article XIII of the Constitution. Doubtless, the SDP of petitioner Hacienda Luisita, Inc. *(HLI)*, which has as its basis Section 31 of R.A. No. 6657, is unconstitutional.

Under the SDP, instead of being given lands, the Farmworkers/ Beneficiaries *(FWBs)* were given shares of stocks in HLI, by which scheme, being in the minority, they have absolutely no control over the land. In fact, they can lose it. A case in point is the segregation and conversion of 300 hectares of HLI land from agricultural to non-agricultural purposes. When the 300 hectares were converted, transferred, mortgaged, and sold to pay an indebtedness, the FWBs had no say about it and effectively lost a big chunk of their land.

In a genuine land reform, the qualified FWBs should be given, directly or collectively, ownership of the land they till with all legal rights and entitlement, subject only to the limitations under the law, like the retention limits, expropriation and payment of just compensation. Under a collective ownership, if they are not in control of the cooperative or association, it cannot be considered a compliance with the law.

At any rate, as the majority is of the view that the constitutionality of the SDP cannot be assailed in this case as it is not the *lis mota*, I agree with the *ponencia* that FWBs are real parties-in-interest and that the Presidential Agrarian Reform Council *(PARC)* has the power and authority to revoke the SDP. I am also of the considered position that there has been serious violations of the Stock Distribution Option Agreement *(SDOA)*. The reasons, some contained in the Terminal Report, dated September 22, 2005, by the Special Task Force, are the following:

> 1] The "man days" method of computation, adopted in computing the number of shares to which each FWB is entitled, prejudiced the original qualified FWBs numbering about 6,296 and denied them of their rights under the law. When their numbers increased to 10,502 through the years under the "man days" method, the value of the shares of the original FWBs was effectively diluted.
>
> Under the man-days system, the FWBs could be denied the opportunity to be granted shares of stock by just being not allowed to work altogether under the guise of rotation. There is also no

guarantee that they would receive their due if they get retrenched or retired.

2] The 30-year time frame for stock transfer extended the period for HLI to complete the distribution of the 118,391,976.85 shares and, thus, violated the compliance periods provided under Section 31 of the CARL and Section 11 of AO No. 10-1988. Per Section 11, the approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner of the approval thereof by the PARC and the transfer of the shares of stocks in the names of the qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission *(SEC)* within sixty (60) days from the said implementation of the stock distribution plan.

3] The agricultural land involved has not been maintained as "unfragmented." At least 500 hectares thereof have been carved out after its land use has been converted to non-agricultural uses.

4] There was no DAR verification and audit of the values of the agricultural lands and petitioner HLI's total assets. Thus, the value of the supposed shares of the FWBs in HLI is suspect.

5] HLI failed to comply with its obligation to grant 3% of the gross sales every year as production sharing benefit on top of the worker's salaries.

6] HLI failed to comply with its undertaking to distribute homelots to all the FWBs under the SDOA.

Moreover, as stated in the Terminal Report, the FWBs did not have any participation in the valuation of the agricultural land for the purpose of determining its proportionate equity in relation to the total assets of the corporation.

Pending the issuance of the corresponding shares of stocks, the FWBs remain ordinary farmers and/or farmworkers and the land remains under the full ownership and control of the original owner, the HLI/TADECO. Per Terminal Report, there was no compliance with the representations/warranties made under Section 5(a) and (b) of said Administrative Order No. 10. As claimed by HLI itself, the corporate activity has already stopped so that the contemplated profitability, increased income

and greater benefits enumerated in the SDP have remained mere illusions.

Regarding the 300 hectares sold to Luisita Industrial Park Corporation *(LIPCO)* and RCBC, again I am with the *ponencia* that they were buyers in good faith and, thus, said portions should be excluded from the CARP's compulsory coverage. Records disclose that the conversion of these lands was with the acquiescence of the FWBs and approved by the PARC after full compliance with R.A. No. 6657 and the DAR's applicable regulations. The only dispute on this is the proceeds of the sale. After the conversion was approved, Centennary Holdings sold it to LIPCO for ₱750 million. On the other hand, RCBC received approximately 184 hectares of land from LIPCO, through a *dacion en pago*, in payment for LIPCO's debt amounting to ₱431.7 million. There is no indication that LIPCO and RCBC, both of whom exercised due diligence, were on notice that there was a defect in the titles of the lands they purchased. The FWBs, however, are entitled to receive the proceeds of the sales to LIPCO and RCBC based on their value at the time of the taking plus legal interest.

As to the remaining 200 hectares (of the original 500 hectares converted from agricultural to non-agricultural use with the DAR's approval), which appear to have been sold by HLI to Luisita Realty Corporation *(LRC)*, they should be subject to compulsory CARP coverage. Unlike LIPCO and RCBC, LRC never assailed PARC Resolution No. 2005-32-01, or the DAR's Notice of Coverage order. Its silence and inaction may be deemed an acquiescence with the PARC decision to place the land under the compulsory coverage of the CARP. Certainly, LRC's situation is different from the two, particularly RCBC, who is a mortgagee and, later, payee or purchaser in good faith. LRC, however, should be reimbursed for what it had paid plus legal interest.

With respect to the 80 hectares expropriated by the government for the SCTEX, there seems to be no dispute except on the disposition of the proceeds. The portion should be excluded from the coverage, pursuant to Section 6-A of Republic Act No. 6657, as amended by R.A. No. 9700. Like in the purchase

by LIPCO and RCBC, the proceeds should go to the FWBs based on the value at the time of taking plus legal interest.

There being a violation of the SDOA, the petition should be *denied* and PARC's Resolution No. 2005-32-01 revoking the SDP, as well as its Resolution No. 2006-34-01, denying the petitioner's motion for reconsideration should be *affirmed*, with the *modification* that the purchase of the 300-hectare portion by LIPCO and RCBC, as well as the expropriation of the 80-hectare portion for the SCTEX complex, should be considered as valid. Thus, the said portions should be beyond the compulsory CARP coverage.

As a consequence of the violations, the subject lands should be distributed to the FWBs under the supervision of the DAR, who will determine just compensation, after proper audit and valuation of those already given and received and set off. Needless to state, the compensation should be with legal interest. I agree with the position of Justice Arturo Brion that the reckoning date for purposes of just compensation should be May 11, 1989, when the SDOA was executed. Said date is the time of the *taking* of the land for agrarian reform purposes.

In this regard, except on the matter of the 200 hectares sold to LRC, I adopt the reasoning of, and disposition recommended by, Justice Brion in his Separate Concurring and Dissenting Opinion.

Further, I fully agree with the *ponencia* that the FWBs are entitled to retain the salaries, wages and other benefits they received for services rendered by them as employees of HLI.

The bottom line is that the qualified FWBs should be given, directly or collectively, ownership of the land they till with all legal rights and entitlement, subject only to the prescribed retention limits, expropriation and the payment of just compensation.

The FWBs, however, who would opt to remain as stockholders of HLI, may waive their hard-won right to actually own the lands they till. After all, it is an attribute of ownership subject, of course, to the limitations under the law.

Under Section 27 of R.A. No. 6657, FWBs may sell the lands they acquired under the CARP subject to the limitations stated therein. Thus:

> SEC. 27. *Transferability of Awarded Lands*. — Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries for **a period of ten (10) years**: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the Barangay Agrarian Reform Committee (BARC) of the *barangay* where the land is situated. The Provincial Agrarian Coordinating Committee (PARCCOM), as herein provided, shall, in turn, be given due notice thereof by the BARC.
>
> If the land has not yet been fully paid by the beneficiary, the right to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.
>
> In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he has made on the land.

Considering, however, that more than 10 years have elapsed from May 11, 1989, the date of the "taking" of the *Hacienda Luisita*, the qualified FWBs, who can validly dispose of their due shares, may do so, in favor of LBP or other qualified beneficiaries. The 10-year period need not be counted from the issuance of the Emancipation Title *(EP)* or Certificate of Land Ownership Award *(CLOA)* because, under the SDOA, shares, not land, were to be awarded and distributed.

The DAR shall select the method of determining the will of the parties and supervise it.

DISSENTING OPINION

CORONA, *C.J.*:

> MR. OPLE. x x x **But when the Constitution directs Congress to the effect that the State shall encourage and undertake distribution of all agricultural lands**, subject to limitations put by law especially on retention limits, **does this contemplate** — this question I address to the Committee and particularly to Commissioner Tadeo — **a blanket approach to all agricultural lands so that we do not distinguish between, let us say, the owners of Hacienda Luisita, the biggest plantation in Luzon with 6,000 hectares**[,] and this chap in Laguna or Quezon who has only 10 hectares of coconut plantation? ***Sa inyo bang masid at wari ay masasagasaan ng land distribution ang dalawang ito****: ang may-ari ng pinakamalaking hasyenda dito sa Luzon at isang hindi naman mayaman, ni hindi mariwasa, pangkaraniwang tao lamang na nagmamay-ari ng isang sukat ng lupang tinatamnan ng niyog na hindi hihigit sa sampung ektarya?*
>
> MR. TADEO. ***Pareho***.
>
> x x x x x x x x x
>
> MR. OPLE. x x x With respect to just a few enormous landed estates, I have already given examples: **Hacienda Luisita, the biggest in Luzon, with 6,000 hectares of rice and corn land and sugar land and with 6,000 tenants and workers**; the Canlubang Sugar Estate, just across the city in Laguna; and in the West Visayas alone with about 30,000 sugar planters or hacenderos — the aggregate for the nation escapes me for the moment. **In the ultimate stage of the land reform program as now envisioned, will all of these estates be**

> **redistributed to their tenants**, and if they have no tenants to whom will they be redistributed?
>
> MR. TADEO. **The principle is agrarian land for the tillers and land for the landless**. x x x[1]

Agrarian reform is an essential element of social justice under the 1987 Constitution. It "mandates that farmers and farmworkers have the right to own the lands they till, individually or collectively, through cooperatives or similar organizations."[2] It aims to liberate farmers and farmworkers from bondage to the soil, to ensure that they do not remain slaves of the land but stewards thereof.

The decision of the Court in this case today should promote the constitutional intent of social justice through genuine and meaningful agrarian reform. This is imperative because the framers of the 1987 Constitution themselves recognized the importance of Hacienda Luisita in the implementation of agrarian reform in the Philippines. Thus, this case is of transcendental importance as it is a test of the Court's fidelity to agrarian reform, social justice and the Constitution.

HISTORY OF AGRARIAN REFORM IN THE PHILIPPINES

Agrarian reform has been envisioned to be liberating for a major but marginalized sector of Philippine society, the landless farmers and farmworkers. History, too, has been said to be liberating. A quick review of the long and tortuous story "of the toiling masses to till the land as freemen and not as slaves chained in bondage to a feudalistic system of land ownership"[3] should enlighten us better on the significance of the Court's decision in this case.

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[1] Record of the Constitutional Commission, Vol. II, pp. 663-664. Emphasis supplied.

[2] *Id.*, p. 607.

[3] Land Reform – Pillar of the Nation's Recovery, Commissioner Gregorio D. Tingson, Record of the Constitutional Commission, Vol. III, p. 784.

By Royal Decree of November 7, 1751 the King of Spain acknowledged that the revolts which broke out among peasants in the provinces of Cavite, Bulacan, Laguna and Morong (now, Rizal) stemmed from "injuries which the [Filipinos] received from the managers of the estates which are owned by the religious of St. Dominic and those of St. Augustine — usurping the lands of the [Filipinos], without leaving them the freedom of the rivers for their fishing, or allowing them to cut woods for their necessary use, or even collect the wild fruits x x x."[4] The King approved the pacification measures adopted by Don Pedro Calderon Enriquez of the Royal *Audiencia* who "demanded from the aforesaid religious the titles of ownership of the lands which they possessed; and notwithstanding the resistance that they made to him x x x distributed to the villages the lands which the [religious] orders had usurped, and all which they held without legitimate cause [he] declared to be crown lands."[5]

It has been two centuries and three scores since the first recorded attempt at compulsory land redistribution in the Philippines.

It proved to be ineffectual though for by the end of the Spanish period and the beginning of the American era the same religious orders still controlled vast tracts of land commonly known as "friar lands."[6] In his Special Reports to the U.S. President in 1908, Governor General William Howard Taft placed friar landholdings at 171,991 hectares tilled by about 70,000 landless tenants.[7] Noting that such situation was "[a] most potential source

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[4] As translated to English in Blair, E.H. & Robertson, J.A.. 1911. *The Philippine Islands*, 1493-1803, Vol. 1, No. 48: 27-36. Arthur and Clarke Company, Cleveland. Accessed through http://quod.lib.umich.edu/p/philamer/ on 13 March 2011.

[5] *Id.*

[6] Saulo-Adriano, Lourdes, *A General Assessment of the Comprehensive Agrarian Reform Program*, pp. 5-11 (1991), Philippine Institute for Development Studies. Accessed through http://dirp4.pids.gov.ph.

[7] WM. H. Taft (Secretary of War January 23, 1908) and J. M. Dickinson (Secretary of War November 23, 1910), Special Reports on the Philippines to the President, Washington, D.C., January 23, 1908, p. 21. Found in *The*

of disorder in the islands," Taft negotiated with Rome for the purchase of the friar lands for $7 Million with sinking funds.[8] The "lands were to be disposed of to the tenants as rapidly as the public interest will permit"[9] even at a net pecuniary loss to the colonial government.[10]

However, in a sudden shift of policy, the U.S. sold friar lands on terms most advantageous to it[11] – large tracts[12] were sold for close to $7 Million to corporate and individual investors.[13] Most tenants in possession were said to have been disinterested to purchase the lands.[14] They were extended assistance though in the form of better sharing and credit arrangements to ameliorate agrarian relations.[15]

Soon after the Philippines was plunged into a series of peasant uprisings led by the *Sakdalista* in the 1930's and the *Hukbalahap* in the 1950's. Appeasement came in the form of RA 1199 (Agricultural Tenancy Act of 1954) and RA 1400 (Land Reform

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United States and its Territories of the University of Michigan Library Southeast Asia collection which contains the full text of monographs and government documents published in the United States, Spain, and the Philippines between 1870 and 1925 and accessed through http://quod.lib.umich.edu/p/philamer/ on March 13, 2011.

[8] *Id.* at p. 59.

[9] *Id.* at p. 85.

[10] *Id.*

[11] Taft explained that "[a]t the rate of interest the bonds draw, the cost of the lands would in 30 years, when the bonds mature, have represented more than treble the original cost. The Philippine government needs its resources for internal improvements, and it would have been poor financiering to pay interest on the bonds and finally the principal and continue to hold these lands until they would be taken up by inhabitants of the islands, which would mean in the remote future." *Id.*, p. 106.

[12] The Philippine Bill of 1902 set the ceilings on the hectarage of individual and corporate landholdings at 16 has. and 1,024 has., respectively.

[13] *Supra* note 7 at pp. 105-106.

[14] *Id.*

[15] See Public Act No. 4054 (1933).

Act of 1955). RA 1199 allowed tenants to become leaseholders while RA 1400 mandated compulsory land redistribution. However, RA 1400 set unreasonable retention limits at 300 hectares for private rice lands and 600 hectares for corporate lands.[16]

As peasant unrest continued to fester, RA 3844 (Land Reform Code of 1963) was enacted instituting the "operation land transfer" program but allowing a maximum retention area of 75 hectares.[17] This was followed in 1971 by RAs 6389 and 6390 (Code of Agrarian Reforms) which created the Department of Agrarian Reform, reinforced the position of farmers[18] and expanded the scope of agrarian reform by reducing the retention limit to 24 hectares.[19] In 1972, President Ferdinand E. Marcos issued PD 2 proclaiming the entire Philippines as a land reform area. However, PD 27 subsequently restricted the scope of land reform to the compulsory redistribution of tenanted rice and corn lands exceeding seven hectares.

Thus, more than two and a half centuries after compulsory land redistribution was first attempted in the Philippines, there remained so much unfinished business. It is this which the social justice provisions of the 1987 Constitution were intended to finish. Section 4, Article XIII thereof commands:

> Section 4. **The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers who are landless, to own directly or collectively the lands they till** or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, **the State shall encourage and undertake the just distribution of all agricultural lands,** subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment

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[16] Sec. 6.

[17] Sec. 51.

[18] Among others, it provided for the automatic conversion of existing agricultural share tenancy to agricultural leasehold and strengthened the rights of pre-emption and redemption.

[19] Sec. 16, amending Sec. 51 of RA 3844.

of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing. (Emphasis supplied)

By its plain language, it requires that the law implementing the agrarian reform program envisioned by the Constitution should employ a **land redistribution** mechanism. Subject only to retention limits as may be prescribed by Congress and to payment of just compensation, ownership of all agricultural lands are to be distributed and transferred to the farmers and farmworkers who till the land.

There is absolutely no doubt in my mind that the Constitution has ordained land redistribution as the mechanism of agrarian reform. First, it recognizes the **right** of farmers and regular farmworkers who are landless **to own directly or collectively the lands they till**. Second, it affirms the **primacy**[20] **of this**

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[20] The original formulation of the present Section 4, Article XIII was as follows:

SEC. 5. The State shall undertake a genuine agrarian reform program founded on the **primacy of the rights of farmers and farmworkers to own directly or collectively the lands they till**. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such retention limits as the National Assembly may prescribe and subject to a fair and progressive system of compensation. (Record of the Constitutional Commission, Vol. II, p. 605.)

The deliberations of the members of the Constitutional Commission also reveal the following:

MR. TADEO. *Ang tunay na reporma sa lupa ay pangunahing nakabatay sa kapakinabangan ng mg biyaya nito sa nagbubungkal ng lupa at lumilikha ng yaman nito at sa nagmamay-ari ng lupa.* (*Id.*, p. 677)

x x x x x x x x x

MR. BENNAGEN. *Maaari kayang magdagdag sa pagpapaliwanag ng "primacy"? Kasi may cultural background ito. Dahil* agrarian *society pa ang lipunang Pilipino, maigting talaga ang ugnayan ng mga magsasaka sa kanilang lupa. Halimbawa, sinasabi nila na ang lupa ay pinagbuhusan na ng dugo, pawis at luha.* So land acquires a symbolic content that is not simply negated by growth, by productivity, *etc.* The primacy should be seen in relation to an agrarian program that leads to a later stage of social development which at some point in time may already negate this kind of attachment. The assumption is that there are already certain options available to the farmers.

right which is enshrined as the centerpiece of agrarian reform, thereby guaranteeing its enforcement. Third, in the same breath, it directs that, to such end, the State shall undertake the **just distribution of all agricultural lands**,[21] subject only to retention limits and just compensation.

Pursuant to the mandate of Section 4, Article XIII of the Constitution, Congress enacted RA 6657 (Comprehensive Agrarian Reform Law of 1988). It was supposed to be a revolutionary law, introducing innovative approaches to agrarian reform.

Marahil ***ang primacy ay ang pagkilala sa pangangailangan ng magsasaka — ang pag-aari ng lupa****. Ang assumption ay ang pag-aari mismo ng lupa* becomes the basis for the farmers to enjoy the benefits, the fruits of labor. x x x (*Id.*, p. 678)

MR. TADEO. x x x *Kung sinasabi nating si Kristo ay* liberating *dahil ang api ay lalaya at ang mga bihag ay mangaliligtas, sinabi rin ni Commissioner Felicitas Aquino na kung ang history ay liberating, dapat ding maging liberating ang Saligang Batas. Ang magpapalaya sa atin ay ang* agrarian and natural resources reform.

The primary, foremost and paramount principles and objectives are contained [i]n lines 19 to 22: "primacy of the rights and of farmers and farmworkers to own directly or collectively the lands they till." *Ito ang kauna-unahan at pinakamahalagang prinsipyo at layunin ng isang tunay na reporma sa lupa – na ang nagbubungkal ng lupa ay maging may-ari nito*. x x x (695-696)

MR. DAVIDE. x x x we did not delete the concept of the primacy of the rights of farmers and farm workers. In other words, this only confirms the existence of the right, as worded; it is confirmatory of that right. There is no need to emphasize that right because that right is conceded, and it now becomes the duty of the State to undertake these genuine and authentic land and agrarian reforms.

x x x x x x x x x

MR. TADEO. *Maliwanag na nandito iyong* primacy of the rights.

MR. DAVIDE. Certainly, it is inherent, it is conceded, and that is why we give it a mandate. We make it a duty on the part of the State to respect that particular right. (696-697)

[21] Former Chief Justice Hilario G. Davide, Jr., then a Commissioner in the Constitutional Commission, stated that considering the right of farmers and farmworkers to the lands that they till, "it now becomes the duty of the State to undertake these genuine and authentic land and agrarian reforms." Records, Vol. II, p. 697.

Among its novel provisions (and relevant to this case) is Section 31 which provides:

SEC. 31. *Corporate Landowners.* — Corporate landowners may voluntarily transfer ownership over their agricultural landholdings to the Republic of the Philippines pursuant to Section 20 hereof or to qualified beneficiaries, under such terms and conditions consistent with this Act, as they may agree upon, subject to confirmation by the DAR.

Upon certification by the DAR, **corporations owning agricultural lands may give their qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land, actually devoted to agricultural activities, bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them**. In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced. The same principle shall be applied to associations, with respect to their equity or participation.

Corporations or associations which voluntarily divest a proportion of their capital stock, equity or participation in favor of their workers or other qualified beneficiaries under this section shall be deemed to have complied with the provisions of this Act: Provided, That the following conditions are complied with:

a) In order to safeguard the right of beneficiaries who own shares of stocks to dividends and other financial benefits, the books of the corporation or association shall be subject to periodic audit by certified public accountants chosen by the beneficiaries;

b) Irrespective of the value of their equity in the corporation or association, the beneficiaries shall be assured of at least one (1) representative in the board of directors, or in a management or executive committee, if one exists, of the corporation or association;

c) Any shares acquired by such workers and beneficiaries shall have the same rights and features as all other shares; and

d) Any transfer of shares of stocks by the original beneficiaries shall be void *ab initio* unless said transaction is in favor of a qualified and registered beneficiary within the same corporation.

If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.

Section 31 of RA 6657 grants corporate landowners like petitioner Hacienda Luisita, Inc. (HLI) the option to give qualified agrarian reform beneficiaries the right to purchase capital stock of the corporation proportionate to how much the agricultural land actually devoted to agricultural activities bears in relation to the company's total assets, under such terms and conditions as may be agreed upon by them. Such voluntary divestment of a portion of the corporate landowner's capital stock to qualified agrarian reform beneficiaries is considered compliance with the agrarian reform law (RA 6657), subject to certain conditions.

THE FUNDAMENTAL ISSUE

Section 31 of RA 6657 is at the center of this controversy as it is the basis of the assailed stock distribution plan executed by petitioner HLI with farmworker-beneficiaries.

ON THE CONSTITUTIONALITY OF SECTION 31 OF RA 6657

The Constitution has vested this Court with the power and duty to determine and declare whether the scales of constitutionality have been kept in balance or unduly tipped, whether an official action is constitutional or not. As the fundamental and supreme law of the land, the Constitution also serves as the counterweight against which the validity of all actions of the government is weighed. With it, the Court ascertains whether the action of a department, agency or public officer preserves the constitutional equilibrium or disturbs it.

In this case, respondents argue that Section 31 of RA 6657 has been weighed and found wanting.[22] In particular, its

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[22] The expression comes from the Daniel 5:25: "*Mene, mene, thekel, upharsin*." It is loosely translated as "You have been weighed and found wanting; hence, you have been divided and handed to others."

constitutionality is assailed insofar as it provides petitioner HLI the choice to resort to stock distribution in order to comply with the agrarian reform program. Respondents assert that the stock distribution arrangement is fundamentally infirm as it impairs the right of farmers and farmworkers under Section 4, Article XIII of the Constitution to own the land they till.[23]

For its part, petitioner HLI points out that the constitutional issue has been raised collaterally and is therefore proscribed.

The *ponencia* opines that the challenge on the constitutionality of Section 31 of RA 6657 and its counterpart provision in EO 229 must fail because such issue is not the *lis mota* of the case.[24] Moreover, it has become moot and academic.[25]

I strongly disagree.

While the sword of judicial review must be unsheathed with restraint, the Court must not hesitate to wield it to strike down laws that unduly impair basic rights and constitutional values.

Moreover, jurisprudence dictates:

> It is a well-established rule that a court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid **unless such question is raised by the parties** and that when it is raised, if the record also presents some other ground upon which the court may raise its judgment, that course will be adopted and the constitutional question will be left for consideration until **such question will be unavoidable**.[26]

In this case, the question of constitutionality has been raised by the parties-in-interest to the case.[27] In addition, any discussion of petitioner HLI's stock distribution plan necessarily and

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[23] TSN, Aug. 24, 2010, p. 205.

[24] Draft *ponencia*, p. 42.

[25] *Id.* at 43.

[26] *Sotto v. Commission on Elections*, 76 Phil. 516, 522 (1946). (Emphasis supplied)

[27] Noel Mallari and Farmworkers Agrarian Reform Movement, Inc.

inescapably involves a discussion of its legal basis, Section 31 of RA 6657. More importantly, public interest and a grave constitutional violation render the issue of the constitutionality of Section 31 of RA 6657 unavoidable. Agrarian reform is historically imbued with public interest and, as the records of the Constitutional Commission show, **Hacienda Luisita has always been viewed as a litmus test of genuine agrarian reform**. Furthermore, the framers emphasized the primacy of the right of farmers and farmworkers to directly or collectively own the lands they till. The dilution of this right not only weakens the right but also debases the constitutional intent thereby presenting a serious assault on the Constitution.

It is also noteworthy that while the *ponencia* **evades** the issue of constitutionality, it adverts to the doctrine of operative facts in its attempt to come up with what it deems to be a just and equitable resolution of this case. This is significant. The *ponencia* itself declares that the doctrine of operative facts is applied in order to avoid undue harshness and resulting unfairness when a law or executive action is **declared null and void**,[28] therefore unconstitutional. As the Court explained the doctrine:

> **Under the operative fact doctrine, the law is recognized as unconstitutional** but the effects of the unconstitutional law, prior to its declaration of nullity, may be left undisturbed as a matter of equity and fair play. In fact, **the invocation of the operative fact doctrine is an admission that the law is unconstitutional**.[29]

Assuming for the sake of argument that the constitutionality of Section 31 of RA 6657 has been superseded and rendered moot by Section 5 of RA 9700 *vis-a-vis* stock distribution as a form of compliance with agrarian reform, the issue does not thereby become totally untouchable. Courts will still decide cases, otherwise moot and academic, if:

> x x x first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public

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[28] Draft *ponencia*, p. 70.

[29] *League of Cities of the Philippines v. Commission on Elections*, G.R. No. 176951, 24 August 2010. (Emphasis supplied)

interest is involved; third, when the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review . . .[30]

In this case, all the above-mentioned requisites are present:

First, a grave violation of the Constitution exists. Section 31 of RA 6657 runs roughshod over the language and spirit of Section 4, Article XIII of the Constitution.

The first sentence of Section 4 is plain and unmistakeable. It grounds the mandate for agrarian reform on the right of farmers and regular farmworkers, who are landless, **to own** directly or collectively the **land** they till. The express language of the provision is clear and unequivocal — agrarian reform means that farmers and regular farmworkers who are landless should be given direct or collective ownership of the land they till. That is their right.

Unless there is land distribution, there can be no agrarian reform. Any program that gives farmers or farmworkers anything less than ownership of land fails to conform to the mandate of the Constitution. **In other words, a program that gives qualified beneficiaries stock certificates instead of land is not agrarian reform**.

Actual land distribution is the essential characteristic of a constitutional agrarian reform program. The polar star, when we speak of land reform, is that **the farmer has a right to the land he tills**.[31] Indeed, a reading of the framers' intent clearly

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[30] *Quizon v. Commission on Elections*, G.R. No. 177927, 15 February 2008, 545 SCRA 635; *Mattel, Inc. v. Francisco*, G.R. No. 166886, 30 July 2008, 560 SCRA 506.

[31] Commissioner Felicitas S. Aquino of the Constitutional Commission made this remark during the deliberations on the provision on agrarian reform. According to her, while a farmer's right to the land he tills is not an immutable right as the claim of ownership does not automatically pertain or correspond to the same land that the farmer or farm worker is actually and physically tilling, it simply yields to the limitations and adjustments provided for in the second sentence of the first paragraph, specifically the retention limits. (Records of the Constitutional Commission, Vol. III, p. 10)

shows that the philosophy behind agrarian reform is the distribution of land to farmers, nothing less.

MR. NOLLEDO. And when we talk of the phrase "to own directly," we mean the principle of **direct ownership by the tiller**?

MR. MONSOD. Yes.

MR. NOLLEDO. And when we talk of "collectively," we mean communal ownership, stewardship or State ownership?

MS. NIEVA. In this section, we conceive of cooperatives; that is farmers' cooperatives **owning the land**, not the State.

MR. NOLLEDO. And when we talk of "collectively," referring to farmers' cooperatives, do the farmers own specific areas of land where they only unite in their efforts?

MS. NIEVA. That is one way.

MR. NOLLEDO. Because I understand that there are two basic systems involved: the "moshave" type of agriculture and the "kibbutz." So are both contemplated in the report?

MR. TADEO. *Ang dalawa kasing pamamaraan ng pagpapatupad ng tunay na reporma sa lupa ay ang pagmamay-ari ng lupa na hahatiin sa individual na pagmamay-ari* – directly – *at ang tinatawag na sama-samang gagawin ng mga magbubukid. Tulad sa Negros, ang gusto ng mga magbubukid ay gawin nila itong "cooperative or collective farm." Ang ibig sabihin ay sama-sama nilang sasakahin.*

MR. BENNAGEN. *Madam President, nais ko lang dagdagan iyong sagot ni Ginoong Tadeo.* x x x

Kasi, doon sa "collective ownership," *kasali din iyong* "communal ownership" *ng mga minorya. Halimbawa sa Tanay, noong gumawa kami ng isang pananaliksik doon, nagtaka sila kung bakit kailangan pang magkaroon ng* "land reform" *na kung saan ay bibigyan sila ng tig-iisang titulo. At sila nga ay nagpunta sa* Ministry of Agrarian Reform *at sinabi nila na hindi ito ang gusto nila; kasi sila naman ay magkakamag-anak.* ***Ang gusto nila ay lupa*** *at hindi na kailangan ang tig-iisang titulo. Maraming ganitong kaso mula sa Cordillera hanggang Zambales, Mindoro at Mindanao, kayat kasali ito sa konsepto ng* "collective ownership."

x x x x x x x x x

MR. VILLACORTA. x x x Section 5[32] gives the **opportunity for tillers of the soil to own the land that they till**; x x x

x x x x x x x x x

MR. TADEO. x x x ***Ang dahilan ng kahirapan natin sa Pilipinas ngayon ay ang pagtitipon-tipon ng vast tracts of land sa kamay ng iilan***. *Lupa ang nagbibigay ng buhay sa magbubukid at sa iba pang manggagawa sa bukid. Kapag inalis sa kanila ang lupa, parang inalisan na rin sila ng buhay. Kaya* ***kinakailangan talagang magkaroon ng tinatawag na*** **just distribution**. x x x

x x x x x x x x x

MR. TADEO. *Kasi ganito iyan.* ***Dapat muna nating makita ang prinsipyo ng agrarian reform, iyong maging may-ari siya ng lupa na kaniyang binubungkal. Iyon ang kauna-unahang prinsipyo nito***. x x x

x x x x x x x x x

MR. TINGSON. x x x When we speak here of "to own directly or collectively the lands they till," is this land for the tillers rather than land for the landless? Before, we used to hear "land for the landless," but now the slogan is "land for the tillers." Is that right?

MR. TADEO. *Ang prinsipyong umiiral dito ay iyong* **land for the tillers**. *Ang ibig sabihin ng* "directly" *ay tulad sa implementasyon sa* rice and corn lands *kung saan* ***inaari na ng mga magsasaka ang lupang binubungkal nila***. *Ang ibig sabihin naman ng* "collectively" *ay* ***sama-samang paggawa sa isang lupain o isang bukid****, katulad ng sitwasyon sa Negros.*

x x x x x x x x x

MR. BENNAGEN. *Maaari kayang magdagdag sa pagpapaliwanag ng* "primacy"? *Kasi may* cultural background *ito. Dahil* agrarian society *pa ang lipunang Pilipino, maigting talaga ang ugnayan ng mga magsasaka sa kanilang lupa. Halimbawa, sinasabi nila na ang lupa ay pinagbuhusan na ng dugo, pawis at luha.* So land acquires a symbolic content that is not simply negated by growth, by productivity, *etc*. The primacy should be seen in relation to an agrarian program that leads to a later stage of social development

[32] As stated earlier, the present Section 4 was numbered Section 5 in the first draft.

which at some point in time may already negate this kind of attachment. The assumption is that there are already certain options available to the farmers. *Marahil* ***ang primacy ay ang pagkilala sa pangangailangan ng magsasaka — ang pag-aari ng lupa***. *Ang* assumption *ay* ***ang pag-aari mismo ng lupa*** **becomes the basis for the farmers to enjoy the benefits, the fruits of labor**. x x x (678)

x x x x x x x x x

MR. TADEO. x x x *Kung sinasabi nating si Kristo ay liberating dahil ang api ay lalaya at ang mga bihag ay mangaliligtas, sinabi rin ni Commissioner Felicitas Aquino na kung ang history ay liberating, dapat ding maging liberating ang Saligang Batas. Ang magpapalaya sa atin ay ang* agrarian and natural resources reform.

The primary, foremost and paramount principles and objectives are contained [i]n lines 19 to 22: "primacy of the rights and of farmers and farmworkers to own directly or collectively the lands they till." ***Ito ang kauna-unahan at pinakamahalagang prinsipyo at layunin ng isang tunay na reporma sa lupa — na ang nagbubungkal ng lupa ay maging may-ari nito***. x x x (695-696)

The essential thrust of agrarian reform is land-to-the-tiller. Thus, to satisfy the mandate of the constitution, any implementation of agrarian reform should always preserve the control over the land in the hands of its tiller or tillers, whether individually or collectively.

Consequently, any law that goes against this constitutional mandate of the actual grant of land to farmers and regular farmworkers must be nullified. If the Constitution, as it is now worded and as it was intended by the framers envisaged an alternative to actual land distribution (*e.g.*, stock distribution) such option could have been easily and explicitly provided for in its text or even conceptualized in the intent of the framers. Absolutely no such alternative was provided for. Section 4, Article XIII on agrarian reform, in no uncertain terms, speaks of **land** to be owned directly or collectively by farmers and regular farm workers.

By allowing the distribution of capital stock, not land, as "compliance" with agrarian reform, Section 31 of RA 6657 directly and explicitly contravenes Section 4, Article XIII of

the Constitution. The corporate landowner remains to be the owner of the agricultural land. Qualified beneficiaries are given ownership only of shares of stock, not the lands they till. Landless farmers and farmworkers become **landless stockholders** but still tilling the land of the corporate owner, thereby perpetuating their status as landless farmers and farmworkers.

Second, this case is of exceptional character and involves paramount public interest. In *La Bugal-B'Laan Tribal Association, Inc.*,[33] the Court reminded itself of the need to recognize the extraordinary character of the situation and the overriding public interest involved in a case. Here, there is a necessity for a categorical ruling to end the uncertainties plaguing agrarian reform caused by serious constitutional doubts on Section 31 of RA 6657. While the *ponencia* would have the doubts linger, strong reasons of fundamental public policy demand that the issue of constitutionality be resolved now,[34] before the stormy cloud of doubt can cause a social cataclysm.

At the risk of being repetitive, agrarian reform is fundamentally imbued with public interest and the implementation of agrarian reform at Hacienda Luisita has always been of paramount interest. Indeed, **it was specifically and unequivocally targeted when agrarian reform was being discussed in the Constitutional Commission**. Moreover, the Court should take judicial cognizance of the violent incidents that intermittently occur at Hacienda Luisita, solely because of the agrarian problem there. Indeed, Hacienda Luisita proves that, for landless farmers and farmworkers, the land they till is their life.

The Constitution does not only bestow the landless farmers and farmworkers the right to own the land they till but also concedes that right to them and makes it a duty of the State to respect that right through genuine and authentic agrarian reform. To subvert this right through a mechanism that allows stock

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[33] *La Bugal-B'laan Tribal Association, Inc., et al. v. Victor O. Ramos, Secretary, Dept. Of Environment & Natural Resources, et al.*, G.R. No. 127882, December 1, 2004.

[34] *Gonzales v. COMELEC*, G.R. No. L-27833, 18 April 1969, 27 SCRA 836.

distribution in lieu of land distribution as mandated by the Constitution strikes at the very heart of social justice. As a grave injustice, it must be struck down through the invalidation of the statutory provision that permits it.

To leave this issue unresolved is to allow the further creation of laws, rules or orders that permit policies creating, unintentionally or otherwise, means to avoid compliance with the foremost objective of agrarian reform — to give the humble farmer and farmworker the right to own the land he tills. To leave this matter unsettled is to encourage future subversion or frustration of agrarian reform, social justice and the Constitution.

Third, the constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public.[35] Fundamental principles of agrarian reform must be established in order that its aim may be truly attained.

One such principle that must be etched in stone is that no law, rule or policy can subvert the ultimate goal of agrarian reform, the actual distribution of land to farmers and farmworkers who are landless. Agrarian reform requires that such landless farmers and farmworkers be given direct or collective ownership of the land they till, subject only to the retention limits and the payment of just compensation. There is no valid substitute to actual distribution of land because the right of landless farmers and farmworkers expressly and specifically refers to a **right to own the land they till**.

Fourth, this case is capable of repetition, yet evading review. As previously mentioned, if the subject provision is not struck down today as unconstitutional, the possibility of passing future laws providing for a similar option is ominously present. Indeed, what will stop our legislators from providing artificial alternatives to actual land distribution if this Court, in the face of an

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[35] This is in consonance with the Court's symbolic function of educating the members of the judiciary and of the legal profession as to the controlling principles and concepts on matters of great public importance. (See *David v. Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, 03 May 2006, 489 SCRA 160.)

opportunity to do so, does not declare that such alternatives are completely against the Constitution?

We would be woefully remiss in our duty of safeguarding the Constitution and the constitutionally guaranteed right of a historically marginalized sector if we allowed a substantial deviation from its language and intent.

The following findings of the Special Task Force as stated in its Terminal Report[36] are worth reiterating:

> ... sugar-coated assurances were more than enough to make them fall for the SDO as they made them feel rich as "stock holder" of a rich and famous corporation despite the dirt in their hands and the tatters they use; given the feeling of security of tenure in their work when there is none; expectation to receive dividends when the corporation has already suspended operations allegedly due to losses; and a stable sugar production by maintaining the agricultural lands when a substantial portion thereof, of almost 1/8 of the total areas, has already been converted to non-agricultural uses.

Truly, the pitiful consequences of a convoluted agrarian reform policy, such as those reported above, can be avoided if laws were made to truly fulfill the aim of the constitutional provisions on agrarian reform. As the Constitution sought to make the farmers and farmworkers masters of their own land, the Court should not hesitate to state, without mincing word, that qualified agrarian reform beneficiaries deserve no less than ownership of land.

The river cannot rise higher than its source. An unconstitutional provision cannot be the basis of a constitutional act. As the stock distribution plan of petitioner HLI is based on Section 31 of RA 6657 which is unconstitutional, the stock distribution plan must perforce also be unconstitutional.

ON PETITIONER'S LONG DUE OBLIGATION TO DISTRIBUTE HACIENDA LUISITA TO FARMERS

Another compelling reason exists for ordering petitioner HLI to distribute the lands of Hacienda Luisita to farmworker

[36] *Rollo,* pp. 386-405.

beneficiaries — the National Government, in 1957, aided petitioner HLI's predecessor-in-interest in acquiring Hacienda Luisita with the condition that the acquisition of Hacienda Luisita should be made "with a view to distributing this *hacienda* to small farmers in line with the [government][37]'s social justice program."[38] The distribution of land to the farmers should have been made within ten years. That was a *sine qua non* condition. It could have not been done away with for mere expediency. Petitioner HLI is bound by that condition.[39]

Indeed, the National Government sought to enforce the condition when it filed a case on May 7, 1980 against Tarlac Development Corporation (TADECO), petitioner HLI's predecessor-in-interest, in the Regional Trial Court of Manila, Branch 43.[40] The case, docketed as Civil Case No. 131654 entitled "*Republic of the Philippines vs. TADECO*," sought the surrender by TADECO of Hacienda Luisita to the Ministry of Agrarian Reform for distribution to qualified farmworker-beneficiaries.[41] In a decision dated December 2, 1985, the trial court upheld the position of the National Government and ordered TADECO to transfer control of Hacienda Luisita to the Ministry of Agrarian Reform, which will distribute the land to small farmers after paying TADECO ₱3.988 Million.[42]

The trial court's decision was appealed to the Court of Appeals where it was docketed as CA-G.R. CV No. 08364. The appellate

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[37] The term used was "Administration."

[38] Central Bank Monetary Board Resolution No. 1240 dated August 27, 1957 as quoted in Alyansa ng mga Manggagawag Bukid ng Hacienda Luisita's Petisyon (Para sa Pagpapawalang-Bisa sa Stock Distribution Option), Annex "K" of the petition. *Rollo*, pp. 175-183, 175.

[39] Contracts are obligatory and, as a rule, are binding to both parties, their heirs and assigns. See Articles 1308 and 1311, New Civil Code.

[40] Comment/Opposition of respondents Supervisory Group of Hacienda Luisita, Inc., p. 7. *Rollo*, pp. 530-641, p. 536.

[41] *Id*.

[42] *Id*.

court, in a resolution dated May 18, 1988, dismissed the appeal without prejudice:

> WHEREFORE, the present case on appeal is hereby **dismissed without prejudice**, and should be **revived if any of the conditions as above set forth is not duly complied with by TADECO**.
>
> The conditions referred to are the following:
>
> (a) should TADECO fail to obtain approval of the stock distribution plan for failure to comply with all the requirements for corporate landowners set forth in the guidelines issued by the PARC or
>
> (b) if such stock distribution plan is approved by PARC, but TADECO fails to initially implement it.[43]

In this case, the stock distribution plan of petitioner HLI, TADECO's successor-in-interest, could not have been validly approved by the PARC as it was null and void for being contrary to law. Its essential terms, particularly the "man days" method for computing the number of shares to which a farmworker-beneficiary is entitled and the extended period for the complete distribution of shares to qualified farmworker-beneficiaries are against the letter and spirit of Section 31 of RA 6657, assuming that provision is valid, and DAO No. 10-1988.

Even assuming that the approval could have been validly made by the PARC, the subsequent revocation of such approval meant that there was no more approval to speak of, that the approval has already been withdrawn. Thus, in any case, the decision of the trial court should be revived, albeit on appeal. Such revival means that petitioner HLI cannot now evade its obligation which has long been overdue, Hacienda Luisita should be distributed to qualified farmworker-beneficiaries.

ON THE EQUITIES OF THE CASE AND ITS QUALIFICATIONS

Agrarian reform's underlying principle is the recognition of the rights of farmers and farmworkers who are landless to own,

[43] Court of Appeals resolution dated May 18, 1988 in CA-G.R. CV No. 08364.

directly or collectively, the lands they till. Actual land distribution to qualified agrarian reform beneficiaries is mandatory. Anything that promises something other than land must be struck down for being unconstitutional.

Be that as it may and regardless of the constitutionality of Section 31 of RA 6657, the lifting of the temporary restraining order in this case coupled with the affirmation of PARC Resolution No. 2005-32-01 dated December 22, 2005 removes all barriers to the compulsory acquisition of Hacienda Luisita for actual land distribution to qualified farmworker-beneficiaries. The said PARC resolution directed that Hacienda Luisita "be forthwith placed under compulsory coverage or mandated land acquisition scheme"[44] and, pursuant thereto, a notice of coverage[45] was issued. Hence, the overall effect of the lifting of the temporary restraining order in this case should be the implementation of the "compulsory coverage or mandatory acquisition scheme" on the lands of Hacienda Luisita.

This notwithstanding and despite the nullity of Section 31 of RA 6657 and its illegitimate offspring, petitioner HLI's stock distribution plan, I am willing to concede that the equities of the case might possibly call for the application of the doctrine of operative facts. The Court cannot with a single stroke of the pen undo everything that has transpired in Hacienda Luisita *vis-à-vis* the relations between petitioner HLI and the farmworker-beneficiaries resulting from the execution of the stock distribution plan more than two decades ago. A simplistic declaration that no legal effect whatsoever may be given to any action taken pursuant to the stock distribution plan by virtue of its nullification will only result in unreasonable and unfair consequences in view of previous benefits enjoyed and obligations incurred by the parties under the said stock distribution plan.

Let me emphasize, however, that this tenuous concession is not without significant qualifications.

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[44] *Rollo*, p. 101.

[45] *Id.* at 103-106.

First, while operative facts and considerations of fairness and equity might be considered in disposing of this case, the question of constitutionality of Section 31 of RA 6657 and, corollarily, of petitioner HLI's stock distribution plan, should be addressed squarely. As the said provision goes against both the letter and spirit of the Constitution, the Court must categorically say in no uncertain terms that it is null and void. The same principle applies to petitioner HLI's stock distribution plan.

Second, pursuant to both the express mandate and the intent of the Constitution, the qualified farmer-beneficiaries should be given ownership of the land they till. That is their right and entitlement, which is subject only to the prescribed retention limits and the payment of just compensation, as already explained.

Due to considerations of fairness and equity, however, those who wish to waive their right to actually own land and instead decide to hold on to their shares of stock may opt to stay as stockholders of petitioner HLI. Nonetheless, **this scheme should apply in this case only**.

Third, the proper action on the instant petition should be to **dismiss** it. For how can we grant it when it invites us to rule against the constitutional right of landless farmworker-beneficiaries to actually own the land they till? How can we sustain petitioner HLI's claim that its stock distribution plan should be upheld when we are in fact declaring that it is violative of the law and of the Constitution? Indeed, to affirm the correctness of PARC Resolution No. 2005-32-01 dated December 22, 2005 revoking the stock distribution plan and directing the compulsory distribution of Hacienda Luisita lands to the farmworker-beneficiaries and, at the same time, grant petitioner HLI's prayer for the nullification of the said PARC Resolution is an exercise in self-contradiction.

To say that we are partially granting the petition is to say that there is rightness in petitioner HLI's position that it can validly frustrate the actual distribution of Hacienda Luisita to the farmworker-beneficiaries. That is fundamentally and morally wrong.

A FINAL WORD

Our action here today is not simply about Hacienda Luisita or a particular stock distribution plan. Our recognition of the right under the Constitution of those who till the land to steward it is the Court's marching order to dismantle the feudal tenurial relations that for centuries have shackled them to the soil in exchange for a pitiful share in the fruits, and install them as the direct or collective masters of the domain of their labor. It is not legal, nor moral, to replace their shackles with mere stock certificates or any other superficial alternative.

We take action in these cases today to promote social justice, champion the cause of the poor and distribute wealth more equitably. By applying the agrarian reform provision of the Constitution, we seek to empower the farmers, enhance their dignity and improve their lives by freeing them from their bondage to the land they till and making them owner-stewards thereof. We express iron-clad fealty to Section 4, Article XIII of the Constitution to dismantle the concentration of land in the hands of the privileged few. Thus, we direct the implementation of a genuine agrarian reform as envisioned by the Constitution by ordering the just distribution of land for the democratization of productive resources.

History will be the unforgiving judge of this Court. We cannot correct a historical anomaly and prevent the eruption of a social volcano by fancy legal arguments and impressively crafted devices for corporate control.

WHEREFORE, I vote that the petition be **DISMISSED**. Section 31 of RA 6657 should be declared **NULL and VOID** for being **unconstitutional**. Consequently, the stock distribution plan of petitioner HLI should likewise be declared **NULL and VOID** for being **unconstitutional**.

Accordingly, PARC Resolution Nos. 2005-32-01 dated December 22, 2005 and 2006-34-01 dated May 3, 2006 should be **AFFIRMED** in so far as they direct the implementation of compulsory coverage or mandated land acquisition scheme in Hacienda Luisita with the **MODIFICATION** that, *pro hac vice*

due to considerations of fairness and equity, qualified farmworker-beneficiaries may waive their right to actually own the lands they till and stay as stockholders of petitioner HLI.

DISSENTING OPINION

SERENO, *J.*:

What the majority has created by its Decision are several legal and operational aberrations that will only set back the long-term resolution of the agrarian conflicts involving Hacienda Luisita and create even more havoc in our legal system. Instead of definitively putting the multi-angled issues to rest, the majority has only succeeded in throwing back the agrarian problem to the farmers, the original landowners and the Department of Agrarian Reform (DAR).

First, the majority Decision ruled in categorical language to (a) deny the Petition of Hacienda Luisita, Inc. (HLI), (b) affirm PARC Resolution No. 2005-32-01 dated 22 December 2005 and Resolution No. 2006-34-01 dated 03 May 2006, which revoked the approval of the HLI Stock Distribution Plan (SDP); and (c) pronounce that PARC Resolution No. 89-9-12 approving the HLI's Stock Distribution Plan (SDP), "is nullified and voided." However, without any legal basis left to support the SDP after the pronouncement of the complete nullity of the administrative approval thereof, the majority proceeded to allow the farmworker-beneficiaries (FWBs) of Hacienda Luisita the option to choose a completely legally baseless arrangement. It is legally baseless because an SDP and its operating agreement, a Stock Distribution Option Agreement (SDOA), can only be valid with the corresponding PARC approval. There is not a single legal twig on which the order to proceed with the voting option can hang, except the will of this Court's majority.

Second, they ruled that the SDOA dated 11 May 1989 between petitioner HLI, Tarlac Development Corporation (TADECO) and the farmworker-beneficiaries (FWBs) is illegal for two violations: (a) the distribution of shares of stock based on the number of man-days worked, and (b) the prolonged thirty-year

time frame for the distribution of shares; additionally, they ruled that these two arrangements have worked an injustice on the FWBs, contrary to the spirit and letter of agrarian reform. Yet, the majority will allow them to remain in such a prejudicial arrangement if they so decide. To allow the FWBs, the disadvantaged sector sought to be uplifted through agrarian reform, to remain in an illegal arrangement simply because they choose to so remain is completely contrary to the mandatory character of social justice legislation.

Third, while the majority states that a stock distribution option agreement can only be valid if the majority of the shares or the control of the corporation is in the hands of the farmers, they still ruled that the doctrine of operative facts led them to unqualifiedly validate the present corporate arrangement wherein the FWBs control only 33% of the shares of petitioner HLI, without ordering in the dispositive portion of the Decision a condition precedent to the holding of the referendum — the restructuring of HLI whereby majority control is firmly lodged in the FWBs.

Fourth, the majority employ the doctrine of operative facts to justify the voting option, even if jurisprudence allows this doctrine to be applied only in the extreme case in which equity demands it. The doctrine of operative facts applies only to prevent a resulting injustice, if the courts were to deny legal effect to acts done in good faith, pursuant to an illegal legislation or perhaps even executive action, but prior to the judicial declaration of the nullity of the government action. Here, there is no room for the application of the equity jurisdiction of the Court, when the CARL, in Section 31, categorically provides for direct land distribution in the event a stock distribution is not completed.

Fifth, assuming equity were to be applied, then it should be applied in favor of the FWBs by ordering direct land distribution, because that is the inequity that continues to fester — that the FWBs who have been promised ownership of the lands they till are denied the same, twenty-three years after the passage of CARL.

Sixth, the majority ruled that the issue of constitutionality of the stock distribution option under Section 31 of the Comprehensive

Agrarian Reform Law, Republic Act No. 6657, is not the *lis mota* of the case; hence, the issue of constitutionality should be avoided if there is another basis for the court to rule on the case. Yet, the majority proceeded to discuss and even rule in favor of its constitutionality.

Should there be no reversal of the above aberrant ruling allowing the FWBs to vote to remain in HLI, the only way for the ruling to not work too grave an injustice is if petitioner HLI is required to be restructured in such a way: (1) that the correct valuation of the lands *vis-à-vis* non-land assets be made, and (2) that no less than 51% of the controlling shares, as well as the beneficial ownership of petitioner HLI, be in the hands of qualified FWBs. Unless this is done, DAR should not even proceed to conduct a referendum giving the FWBs the choice to stay in a corporation of which they have no control.

I posit, as Justice Arturo D. Brion does, that FWBs be immediately empowered to dispose of the lands as they so deem fit. I disagree with the majority that those who will opt to leave the SDOA can only dispose of their lands no less than ten (10) years after the registration of the certificate of land ownership award (CLOA) or the emancipation patent (EP) and not until they have fully paid the purchase price to the Land Bank of the Philippines (LBP). These farmers have waited for decades for the recognition of their rights under the Comprehensive Agrarian Reform Law (CARL). Whether we use Justice Brion's starting point of 11 May 1989, or my starting point of 11 May 1991, twenty years have lapsed and the land has been locked under agricultural use all that time, with no opportunity to exploit its value for other purposes. We should allow the farmers the chance to ride on the crest of economic progress by giving them the chance to engage in the market, not only as entrepreneurs, as corporate or cooperative farmers, but also as lessors or even as real estate sellers. The Court should allow the DAR to devise a mechanism that would enable direct land transfer to buyers or co-development partners, so that the lands and the farmers can truly be free. This is where the Court's equity jurisdiction can weigh in favor of the farmers — to cut down the bureaucratic red tape so that genuine economic freedom on their part can be

realized. Nothing can be more economically stifling than to condemn the use of the land to only one – agricultural – and to deny the FWBs the best economic use of the land for such a prolonged period of time.

We must also not lose sight of the fact that 3,290 hectares of the Hacienda Luisita lands have already been reclassified into non-agricultural uses — industrial, commercial and residential — by the then municipality of Tarlac (which is now a city). If there would again be any application of the equity jurisdiction of the court, it is here where equity can be applied, and the farmers must be allowed to take advantage of this upgraded classification.

I have also proposed that the just compensation to TADECO/ HLI be fixed at the current fair market value, as defined by laws, regulations and jurisprudence, which is at the time of the taking. This is the only logical conclusion from the *ponencia* of Justice Presbitero J. Velasco, Jr. and the opinion of Justice Brion — both of them, and I would require petitioner HLI, to return to the FWBs the proceeds from the sale of the lands sold or transferred at the then prevailing market rates. The Decision and those Opinions therefore fix the just compensation at "fair market value," at the time when the transfer transaction took place, precisely for the reason that they recognize that the purchase price is the just compensation. It is not fair to require TADECO or petitioner HLI to accept less than fair market value if what is being required from them is the payment to the qualified FWBs of the proceeds of the sale of those lands earlier sold or disposed of *at fair market value*. There is an objection that to peg the just compensation at fair market value would mean HLI lands would be prohibitively expensive for the FWBs to acquire and thus they can never pay off the purchase price therefor. But to rule otherwise is unjust to HLI and contrary to the statutory requirement of payment to landowners of just compensation at fair market value. It is for DAR to facilitate all kinds of economic arrangements whereby the farmers can ultimately pay off the value of the land, including the direct transfer of the land to buyers.

I did not go the route proposed by Justice Brion that the just compensation be fixed as of 11 May 1989, and that TADECO or petitioner HLI not be awarded any interest on the amount they should have been paid. There would be injustice in such a proposal, because not only is this approach inconsistent with Justice Brion's position that the market price paid by LIPCO be given to the FWBs, there have already been many improvements introduced by TADECO or petitioner HLI since that time, and to deny them compensation for the value either of those industrial fruits (the improvements) or of the civil fruits (interest on the just compensation) would be seriously unjust. Regardless of the history of the land, improvements have been introduced by TADECO/HLI for which this Court must allow compensation.

It is not right for this Court to distinguish between two classes of persons whose lands the law has subjected to expropriation — by virtue of either compulsory acquisition under CARL or other lawful confiscatory power such as eminent domain — and then to condemn CARL original landowners to an inferior position by denying them compensation at fair market value *vis-a-vis* others whose properties are subjected to compulsory acquisition, but not by land reform. Let this be an acid test for the government — whether it wants and is able to abide by a standard of fairness applicable to all kinds of landowners.

FACTUAL ANTECEDENTS

On 15 June 1988, the CARL took effect.[1] The CARL was enacted to promote social justice for landless farmers and provide "a more equitable distribution and ownership of land with due regard to the rights of landowners to just compensation and to the ecological needs of the nation."[2] The CARL is "a social justice and poverty alleviation program which seeks to empower the lives of agrarian reform beneficiaries through equitable

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[1] *Natalia Realty v. DAR*, G.R. No. 103302, 12 August 1993, 225 SCRA 278.

[2] *Land Bank of the Philippines v. De Abello, et al.*, G.R. No. 168631, 07 April 2009, 584 SCRA 342.

distribution and ownership of the land based on the principle of land to the tiller."[3] It was designed to "liberate the Filipino farmer from the shackles of landlordism and transform him into a self-reliant citizen who will participate responsibly in the affairs of the nation."[4]

Under the CARL, corporations that own agricultural lands have two options:

(a) Land transfer option — voluntarily transfer the ownership of the land to the government or to qualified beneficiaries; or

(b) Stock distribution option — divest or give qualified beneficiaries capital stocks in proportion to the value of the agricultural lands devoted to agricultural activities relative to the company's total assets.[5]

Tarlac Development Corporation (TADECO), a domestic corporation principally engaged in agricultural pursuits, owned and operated a farm, known as Hacienda Luisita, which was covered under the CARL.[6] Hacienda Luisita is a 6,443-hectare agricultural land[7] that straddles the municipalities of Tarlac, Concepcion and La Paz in Tarlac province.[8] At the time, there were 6,296 farm workers, who were qualified as beneficiaries (hereinafter FWBs) under the CARL.[9]

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[3] *Heirs of Aurelio Reyes v. Garilao*, G.R. No. 136466, 25 November 2009, 605 SCRA 294.

[4] Jeffrey M. Riedinger, *AGRARIAN REFORM IN THE PHILIPPINES* (Stanford University Press 1995) at 117.

[5] CARL, Sec. 29 and 31.

[6] CARL, Sec. 4.

[7] Petitioner HLI's Memorandum dated 23 September 2010, at 2, citing "The Factual Back[d]rop of the Hacienda Luisita Case" contained in the memorandum filed by Solicitor General Francisco Chavez in the Court of Appeals, *Republic of the Philippines v. Tarlac Development Corporation, et al.*, CA-G.R. No. 08634 (*rollo*, Vol. 3, at 3644); See also Private Respondent FARM's Memorandum dated 24 September 2010, at 55-56; *rollo*, Vol. 3, at 3859-3860.

[8] Terminal Report dated 22 September 2005; *rollo*, Vol. 1, at 386.

[9] Public Respondent PARC Comment at 3; *rollo*, Vol. 1, at 336.

The management of TADECO and the FWBs, allegedly, agreed to a stock distribution plan instead of a land transfer. To facilitate the plan, both parties agreed to create a spin-off corporation that would receive the agricultural lands and farm related-properties from TADECO.[10] In exchange, FWBs would be given shares in the spin-off corporation in proportion to the value of the agricultural lands.[11]

Thus, TADECO formed and organized a spin-off corporation — Hacienda Luisita, Inc., (HLI), which is the petitioner in the instant case.[12] Petitioner HLI's primary purpose was to engage in and carry on the business of planting, cultivation, production, purchase, sale, barter or exchange of all agricultural products and to own, operate, buy, sell, and receive as security lands to raise such products or as reasonably and necessarily required by the transaction of the lawful business of the corporation.[13]

On 22 March 1989, TADECO assigned and conveyed to petitioner HLI approximately 4,916 hectares of agricultural lands[14]

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[10] "WHEREAS, to facilitate stock acquisition by the farmworkers and at the same time give them greater benefits than if the agricultural land were to be divided among them instead, the FIRST PARTY caused the in-corporation and organization of the SECOND PARTY as the spin-off corporation **to whom it has transferred and conveyed the agricultural portions of Hacienda Luisita and other farm-related properties in exchange for shares of stock of the latter**, . . ." (SDOA, Whereas Clause [*rollo*, Vol.1, at 148])

[11] *Id.*

[12] On 23 August 1988, petitioner HLI was registered with the Securities and Exchange Commission. (2008 General Information Sheet of HLI; *rollo*, Vol. 2, at 2200-2207)

[13] Amended Article of Incorporation of petitioner HLI; *rollo*, Vol. 3, at 3762-3776.

[14] "WHEREAS, in view of the fact that the part of Hacienda Luisita devoted to agriculture, consisting **approximately 4,915.75 hectares**, if divided and distributed among more or less 7,000 farmworkers as potential beneficiaries, would not be adequate to give the said farmworkers a decent means of livelihood, the FIRST PARTY and the THIRD PARTY agreed to resort to distribution of shares of stock to the beneficiaries the better and more equitable mode of compliance with the C.A.R.P. …" (SDOA, Whereas Clause [*rollo*, Vol.1, at 148])

and other properties related to the former's agricultural operations in exchange for shares of stock in the spin-off corporation.[15]

On 11 May 1989, petitioner HLI and TADECO entered into a Memorandum of Agreement with the FWBs for a stock distribution option with respect to the agricultural lands in Hacienda Luisita.[16] The SDOA provides that:

1. The percentage of the value of the agricultural land of Hacienda Luisita (₱196,630,000.00) in relation to the total assets (₱590,554,220.00) transferred and conveyed to the SECOND PARTY [petitioner HLI] is **33.296%** that, under the law, is the proportion of the outstanding capital stock of the SECOND PARTY, which is ₱355,531,462.00 or 355,531,462 shares with a par value of ₱1.00 per share, that has to be distributed to the THIRD PARTY [FWBs] under the stock distribution plan, **the said 33.296% thereof being ₱118,391,976.85 or 118,391,976.85 shares**.

2. The **qualified beneficiaries of the stock distribution plan shall be the farmworkers who appear in the annual payroll**, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by the SECOND PARTY.

3. At the end of each fiscal year, for a period of 30 years, the SECOND PARTY shall arrange with the FIRST PARTY [TADECO] the acquisition and distribution to the THIRD PARTY **on the basis of number of days worked and at no cost to them of one-thirtieth (1/30) of 118,391,976.85 shares of the capital stock** of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,976.85 shares shall have been completely acquired and distributed to the THIRD PARTY.

4. The SECOND PARTY shall guarantee to the qualified beneficiaries of the stock distribution plan that every year they will

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[15] "WHEREAS, the FIRST PARTY has transferred and conveyed to the SECOND PARTY the said agricultural land of Hacienda Luisita and other properties necessary for its operation at an appraised valuation of ₱590,554,220.00, the value of the agricultural land being ₱196,630,000.00 and the other assets, ₱393,924,220.00, which valuations have been appraised and approved in principle by the Securities and Exchange Commission. …" (SDOA, Whereas Clause [*rollo*, Vol.1, at 148]; See Public Respondent PARC Comment at 3 [*rollo*, Vol. 1, at 336])

[16] SDOA dated 11 May 1989; *rollo*, Vol. 1, at 147-150.

receive, on top of their regular compensation, an amount that approximates the equivalent of **three (3%) percent of the total gross sales** from the production of the agricultural land, whether it be in the form of cash dividends or incentive bonuses or both.

5. Even if only a part or fraction of the shares earmarked for distribution will have been acquired from the FIRST PARTY and distributed to the THIRD PARTY, the FIRST PARTY shall execute at the beginning of each fiscal year an irrevocable proxy, valid and effective for one (1) year, in favor of the farmworkers appearing as shareholders of the SECOND PARTY at the start of the said year which will empower the THIRD PARTY or their representative to vote in stockholders' and board of directors' meetings of the SECOND PARTY convened during the year the entire 33.296% of the outstanding capital stock of the SECOND PARTY earmarked for distribution and thus be able to **gain such number of seats in the board of directors** of the SECOND PARTY that the whole 33.296% of the shares subject to distribution will be entitled to.

6. In addition, the SECOND PARTY shall within a reasonable time subdivide and allocate for free and without charge among the qualified family-beneficiaries residing in the place where the agricultural land is situated, **residential or homelots** of not more than 240 sq.m. each, with each family-beneficiary being assured of receiving and owning a homelot in the *barangay* where it actually resides on the date of the execution of this Agreement.

7. This Agreement is entered into by the parties herein in the spirit of the Comprehensive Agrarian Reform Program (C.A.R.P.) of the government and with the supervision of the Department of Agrarian Reform, with the end in view of improving the lot of the qualified beneficiaries of the stock distribution plan and obtaining for them greater benefits. (Emphasis supplied)

In brief, the FWBs were entitled to 33.29% of the total capital stock of petitioner HLI, the equivalent of the value of the agricultural lands compared with its total assets.[17] Since petitioner HLI's outstanding capital shares of stock amounted to a total of 355,531,462, the FWBs were entitled to 118,391,976.85

[17] The value of petitioner HLI's agricultural land was pegged at ₱196,630,000. If compared to the claimed total assets worth ₱590,554,220, then the agricultural land is 33.296% of petitioner HLI's assets.

shares under the SDOA.[18] These shares were to be distributed for free at the end of each fiscal year for a period of thirty years to qualified FWBs on the basis of "man-days."[19]

On 28 September 1989, the government conducted a consultative meeting for the benefit of the leaders of the FWBs in Hacienda Luisita, where they were presented with the various options available under the Comprehensive Agrarian Reform Program (CARP) and the salient features of the possible business arrangements under the land distribution option.[20] Subsequently, an information campaign was conducted in the ten affected *barangays* to explain to the FWBs the different schemes of ownership under the land transfer option and other options available under the CARP.[21]

The SDOA was signed by 5,898 FWBs out of a total work force of 6,296 FWBs, or 92.9% of the FWBs.[22] Subsequently, a referendum was conducted by public respondent Department of Agrarian Reform (DAR) where 5,117 out of the 5,315 FWBs participating voted in favor of the stock distribution; only 132 FWBs preferred land transfer.[23] Thereafter, petitioner HLI submitted the SDOA for approval to the DAR.[24]

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[18] (355,531,462 total shares of stock) x (33.29% proportional share of FWBs) = 118,391,976.85 shares.

[19] Man-days refer to the number of days that a farmworker beneficiary has worked in relation to their entitlement to shares of stock under the SDOA. Some of the parties in the case employed the term "mandays" (Petitioner HLI's Consolidated Reply 29 May 2007, at 55-56) but we use its more readable form "man-days" in this Opinion.

[20] Inter-Agency Committee on Hacienda Luisita, Inc., Highlights of Consultative Meeting; *rollo,* Vol. 3, at 4015-4016.

[21] Minutes of Information Campaign Conducted; *rollo,* Vol. 3, at 4017-4024.

[22] Petition, par. 2, at 21 (*rollo,* Vol. 1, at 30); see also Terminal Report dated 22 September 2005, at 2 (*rollo,* Vol. 1, at 387).

[23] Petition, par. 3, at 22 (*rollo,* Vol. 1, at 31); Compliance dated 25 August 2009; (*rollo,* Vol. 2, at 2213-2492)

[24] Proposal for Stock Distribution under C.A.R.P. (May 1989); *rollo,* Vol. 3, at 3730-3748.

On 06 November 1989, public respondent Presidential Agrarian Reform Council (PARC), through then DAR Secretary Miriam Defensor-Santiago, informed petitioner HLI of the favorable endorsement of the SDOA, but identified some issues for the latter's consideration and revision such as the mechanics of the stock distribution and the matter of the dilution of the shares.[25]

On 14 November 1989, petitioner HLI, in response, clarified to then DAR Secretary Defensor-Santiago several matters regarding the SDOA, specifically the dilution of the shares of FWBs, the mechanics for the distribution of the shares, the actual number of board seats, the distribution of home lots, and the three percent cash dividend.[26]

On 21 November 1989, public respondent PARC unanimously approved the SDOA of TADECO and petitioner HLI for the Hacienda Luisita farm.[27]

According to petitioner HLI,[28] from the time the SDOA was implemented in 1989, the FWBs received the following benefits under the stock distribution plan:

a. Three billion pesos — Salaries, wages and fringe benefits from 1989-2004;

b. Fifty-nine million pesos — Shares of stock in petitioner HLI given for free in fifteen (15) years, instead of thirty (30) years;[29]

c. One hundred fifty million pesos — Three percent (3%) share in the gross sales of the production of the agricultural lands of petitioner HLI;

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[25] PARC Letter dated 06 November 1989; *rollo*, Vol. 1, at 1308-1309.

[26] Letter dated 14 November 1989; *rollo*, Vol. 1, at 1310-1313.

[27] PARC Resolution No. 89-12-2 and PARC Letter dated 12 December 1989; *rollo*, Vol. 1, at 151-152.

[28] Petition, par. 5, at 22-23; *rollo*, Vol. 1, at 31-32.

[29] On 22 April 2005, petitioner HLI completed the distribution of 3,433,167 shares of stock corresponding to Crop Year 2003-2004 to all its existing stockholders of record as of June 2004. (Petitioner HLI Letter dated 09 June 2005 [*rollo*, Vol. 1, at 193])

d. Thirty-seven million five hundred thousand pesos — Three percent (3%) share from the proceeds of the sale of lands;

e. Home lots of two hundred forty square meters each to 3,274 families of FWBs for free;[30] and

f. Other benefits.[31]

On 10 August 1995, petitioner HLI applied for the conversion of five hundred (500) hectares of agricultural lands, which were part of the 4,916 hectares in the Hacienda Luisita farm, subject of the SDOA.[32]

The affected FWBs filed their statement of support for the application for conversion with the DAR.[33] The application was also unanimously approved by the four directors in the Board of petitioner HLI, who represented the stockholder FWBs.[34]

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[30] Out of these FWBs, 2,362 have allegedly received titles to their lots from the Register of Deeds. (Petition at par. 5(e), 23 [*rollo*, Vol. 1, at 32])

[31] Other benefits include: free hospital and medical services for FWBs and their spouses, children and parents; vacation and sick leaves; amelioration bonus; school bus allowance for dependents; emergency relief allowance; maternity benefits; financial benefits due to old age/death; unused sick leave conversion; and various loans.

[32] The lands applied for conversion were covered under Original Certificate of Title/Transfer Certificate of Title Nos. 258719, 240197 and 236741, with an area of 149.7733 hectares, 8.7763 hectares and 1,594.2008 hectares, respectively. (*rollo*, Vol. 1, at 647-650; see also Petition at par. 5(f), 23 [*rollo*, Vol. 1, at 32] and TCT Nos. 240197, 258719 and 236741 [*rollo*, Vol. 2, at 1423-1468])

[33] "The proposed conversion has the support or concurrence of the affected FWBs as verified by the PLUTC [PARC Land Use Technical Committee] Inspection Team." (DAR Conversion Order No. 0306017074-764-95, Series of 1996, at 9-11 [*rollo*, Vol. 1, at 659-661]; see also RCBC Petition-in-Intervention dated 18 October 2007, par. 4.1 at 13 [*rollo*, Vol. 2, at 1372] and *Manipesto ng Pagsuporta* [*rollo*, Vol. 1, at 1327-1328]).

[34] "The eleven (11) directors, including the four directors (representing the farmer-beneficiaries, namely: Ernesto Sangil, Jose Cabilangan, Felimon Salas, Jr., and Jose Buneo Navarro) approved HLI's plan to convert 500 hectares into an industrial estate (300 hectares) and medium to low-cost residential area (200 hectares)." (DAR Conversion Order No. 0306017074-764-95, Series of 1996, at 3 [*rollo*, Vol. 1, at 653]; see also RCBC Petition-in-Intervention dated 18 October 2007, par. 4.2 at 13 [*rollo*, Vol. 2, at 1372])

On 01 September 1995, the Sangguniang Bayan of Tarlac approved the integration and/or inclusion of the Luisita Land Use Plan in the general zoning map of the then Municipality of Tarlac and thus reclassified three thousand two hundred ninety (3,290) hectares of the Hacienda Luisita land from agricultural to commercial, industrial and residential purposes, the land reclassification being required before approval of the application for conversion.[35]

On 14 August 1996, the DAR approved the application for conversion and reclassified 500 hectares of Hacienda Luisita agricultural lands into industrial use.[36]

Petitioner HLI transferred and sold two hundred (200) hectares of the converted industrial lands to Luisita Realty Inc.,[37] for a total amount of ₱500,000,000.[38]

Meanwhile, the old titles covering the remaining 300 hectares of converted lands were cancelled and a new consolidated title was issued in the name of petitioner HLI over that portion of the land.[39] On 13 December 1996, petitioner HLI assigned the same 300-hectare property[40] to Centennary Holdings, Inc., in

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[35] Sangguniang Bayan Resolution No. 280 dated 01 September 1995 (*rollo,* Vol. 3, at 3594-3595); Supervisory Group and AMBALA Comment/ Opposition dated 17 December 2006, par. 7.1, at 16 (*rollo,* Vol. 1, at 545); RCBC Petition-in-Intervention dated 18 October 2007, par. 5 at 13 (*rollo,* Vol. 2, at 1372).

[36] DARCO Conversion Order No. 030601074-764-(95), Series of 1996; *rollo,* Vol. 1, at 651-664.

[37] RCBC Petition-in-Intervention dated 18 October 2007, at 3; *rollo,* Vol. 2, at 1362.

[38] The first 100 hectares covered under TCT No. 287909 were sold on 24 June 1997 for ₱250,000,000 and the remaining 100 hectares under the same title were sold on 27 June 1997 also for ₱250,000,000. (Deeds of Absolute Sale; *rollo,* Vol. 3, at 3753-3756)

[39] TCT Nos. 236741, 258718, 258719 and 240197 were cancelled and TCT No. 287910 was issued. (*Rollo,* Vol. 2, at 1483-1484)

[40] This three hundred hectare portion of land was covered under Transfer Certificate of Title No. 287910.

exchange for 12,000,000 shares in the latter's company.[41] A new certificate of title was subsequently issued in the name of Centennary Holdings.[42]

Thereafter, petitioner HLI entered into a Joint Venture Agreement with other corporate entities[43] to form Luisita Industrial Park Corporation (LIPCO), which was envisioned to be the corporate vehicle that would purchase and develop the converted industrial land in Hacienda Luisita.[44] After it was created and organized, LIPCO agreed to develop the 300-hectare property into a first-class industrial estate[45] and purchased the property from Centennary Holdings for ₱750,000,000.[46]

Under the contract of sale, Centennary Holdings guaranteed that there were no third parties with any right or claim over the property[47] and that it had duly obtained a valid conversion of the property for use as an industrial estate.[48] Moreover, LIPCO alleged that at the time it acquired the property from Centennary

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[41] Deed of Conveyance and Exchange dated 13 December 1996; *rollo,* Vol. 2, at 1485-1487.

[42] TCT No. 292091; *rollo,* Vol. 2, at 1492-1493.

[43] These corporate entities include two domestic corporations (Rizal Commercial Banking Corporation and Aguila Holdings, Inc.), and a Japanese corporation (Itochu Corporation).

[44] Joint Venture Agreement dated 14 October 1996; *rollo,* Vol. 3, at 4313-4342.

[45] Memorandum of Agreement dated 12 November 1997; *rollo,* Vol. 2, at 1494-1498.

[46] Deed of Absolute Sale dated 30 July 1998 (*rollo,* Vol. 2, at 1499-1509) and Supplemental to Deed of Absolute Sale dated 01 February 2000 (*rollo,* Vol. 2, at 1510-1513).

[47] "SELLER's Warranties — The SELLER warrants to the BUYER the following: x x x (b) There are no third parties with any right or claim whatsoever over the Property; . . ." (Deed of Absolute Sale dated 30 July 1998, at 3; *rollo,* Vol. 2, at 1501)

[48] ". . . (d) At the time of the execution of this Agreement, the SELLER has duly obtained a valid Department of Agrarian Reform Conversion Certificate that the Property is classified for us as an industrial estate; x x x" (Deed of Absolute Sale dated 30 July 1998, at 4; *rollo,* Vol. 2, at 1502)

Holdings, the only annotations found in the title were the Secretary's Certificate in favor of Teresita Lopa, the Secretary's Certificate in favor of Shintaro Murai and the conversion of the property from agricultural to industrial and residential use.[49]

Pursuant to the sale, a new title was issued in the name of LIPCO covering the 300 hectare property.[50] This title was later on amended to account for the partial subdivision of the 300 hectare property into two separate lots of 180 hectares and 4 hectares covered by two separate titles.[51] The remaining 115 hectares of the original property remained under LIPCO's original title.[52]

In October 1996, LIPCO mortgaged its property in Hacienda Luisita to Rizal Commercial Banking Corporation (RCBC) to guaranty the payment of a ₱300,000,000 loan, which was annotated in LIPCO's title over the property.[53]

The entire 300-hectare industrial estate was thereafter designated by then President Fidel Ramos as a special economic zone (the Luisita Industrial Park II) by virtue of his powers under the Special Economic Zone Act of 1995.[54] The same

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[49] LIPCO Petition-in-intervention dated 22 November 2007, par. 10, at 14; *rollo,* Vol. 2, at 1558.

[50] TCT No. 310986; *rollo,* Vol. 2, at 1514-1518.

[51] TCT No. 365800 covering one hundred eighty (180) hectares (*rollo,* Vol. 2, at 1519-1520) and TCT No. 365801 covering four hectares (*rollo,* Vol. 1, at 1521-1522).

[52] LIPCO's Petition for Intervention dated 22 November 2007, par. 12.2, at 15; *rollo,* Vol. 2, at 1559.

[53] Real Estate Mortgage (*rollo,* Vol. 3, at 3420-3423); RCBC's Motion for Leave to Intervene dated 18 October 2007, par. 3.4, at 3 (*rollo,* Vol. 2, at 1352); RCBC's Petition-in-Intervention dated 18 October 2007, par. 9.1, at 17 (*rollo,* Vol. 2, at 1376).

[54] "Upon the recommendation of the Philippine Economic Zone Authority, and pursuant to the powers vested in me by law, I, FIDEL V. RAMOS, President of the Republic of the Philippines, and by virtue of the Special Economic Zone Act of 1995, do hereby designate the following parcels of **private lands in Barangay San Miguel, Municipality of Tarlac, Province**

industrial estate project of LIPCO over the 300-hectare land in Hacienda Luisita was also endorsed and supported by the Sangguniang Bayan of the Municipality of Tarlac.[55]

LIPCO claims that from 1998 to 2001, it made developments to the 300-hectare property through its contractor, Hazama Philippines, Inc., which included main roads and sub-roads with proper drainage, a power control house, deep well and water tanks, a drainage reservoir and sewerage treatment plant, a telecommunication system, underground electrical distribution lines, concrete perimeter security fences, and a security house.[56] LIPCO further alleges that it paid US$14,782,956.20 to its contractor for the said improvements and developments to the land.[57]

On 25 November 2004, LIPCO assigned and transferred through a *dacion en pago* the two subdivided lands in Hacienda Luisita to RCBC as full payment for its loan amounting to ₱431,695,732.10.[58] LIPCO's titles to these two subdivided lots were subsequently transferred to RCBC.[59] At the time of the *dacion en pago*, RCBC claimed that there was no annotation in the titles of the two subdivided properties which showed that there was any controversy or adverse claim, except for the deed

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of Tarlac, as Luisita Industrial Park II, consisting of THREE HUNDRED (300) HECTARES, more or less, as defined by the herein technical description: . . ." (Presidential Proclamation No. 1207 dated 22 April 1998 [*rollo*, Vol. 3, at 3400-3402]; see also Certificate of Registration No. EZ-98-05 [*rollo*, Vol. 3, at 3403])

[55] Sangguniang Bayan Resolution No. 392 dated 16 December 1996; *rollo*, Vol. 3, at 4355.

[56] Petitioner-in-Intervention LIPCO's Memorandum dated 23 September 2010, par. 17, at 7; *see also* Annex "X-series" of the Memorandum.

[57] Petitioner-in-Intervention LIPCO's Memorandum dated 23 September 2010, par. 73.1, at 41.

[58] Deed of Absolute Assignment; *rollo*, Vol. 2, at 1523-1527.

[59] TCT Nos. 365800 and 365801 in the name of LIPCO were cancelled and new titles (TCT Nos. 391051 and 391052) were issued in the name of RCBC. (*Rollo*, Vol. 2, at 1528-1533)

of restrictions and its own real estate mortgage over the properties.[60]

In November 2009, the Bases Conversion Development Authority (BCDA) acquired approximately 84 hectares of the property as a right-of-way for a segment of the SCTEX (Subic-Clark-Tarlac-Expressway).[61] An interchange was also constructed on a portion of the Tarlac-Clark segment traversing petitioner's landholdings, for which the government paid ₱80,000,000 as just compensation to petitioner HLI.[62] The legal issue relevant to this portion of the land and its use and expropriation by the government was never expounded in full in the proceedings of the case, but petitioner HLI introduced the matter by manifesting that it in fact distributed 3% of the ₱80,000,000 to the FWBs. This assertion, however, is not included in the certified true report submitted by Jose Cojuangco & Sons Organizations - Tarlac Operations,[63] as the report detailed all the amounts HLI gave to its workers only from 1989 to 2005.[64]

PROCEEDINGS IN THE PARC

On 14 October 2003, the Supervisory Group of HLI (Supervisory Group) filed a "Petition/Protest" with public respondent PARC, praying for the renegotiation of the SDOA, or alternatively, the distribution of petitioner HLI's agricultural lands to the FWBs.[65]

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[60] RCBC's Motion for Leave to Intervene dated 18 October 2007, par. 3.9, at 4 (*rollo*, Vol. 2, at 1353); RCBC's Petition-in-Intervention dated 18 October 2007, par. 16, at 21 (*rollo*, Vol. 2, at 1380).

[61] Petition dated 30 January 2006; *rollo*, Vol. 1, at 59. See also SCTEX *project cost escalation, land valuation questioned*, http://www.congress.gov.ph/committees/commnews/commnews_det.php?newsid=1231, as cited in footnote 161 of the Decision, at 78.

[62] *Id*.

[63] Attached as Annex "G" of petitioner's Memorandum.

[64] Prepared by the finance manager, captioned as "Hacienda Luisita, Inc. Salaries, Benefits and Credit Privileges (in Thousand pesos) Since the Stock Option was Approved by PARC/CARP," *rollo*, Vol. 3, at 3676.

[65] "1. To have a renegotiations of the Memorandum of Agreement the soonest possible time in order to cope up with the demands of time wherein

The petition/protest of the Supervisory Group, led by Jose Julio Zuñiga and Windsor Andaya, contained sixty-two signatures of persons, who claimed to be supervisors in Hacienda Luisita and who held shares in petitioner HLI.[66]

Petitioner HLI filed an Answer dated 04 November 2004,[67] resisting the demands of the Supervisory Group and reiterating that the SDOA is "impervious to any nullification, termination, abrogation, or renegotiation" since the provisions of the law and the rules have been complied with.[68]

On 04 December 2003, private respondent Alyansang Mangagawang Bukid ng Hacienda Luisita (AMBALA) filed a separate "Petisyon" in the Department of Agrarian Reform.[69] Private respondent AMBALA made a similar prayer for the revocation of the SDOA in Hacienda Luisita. Rene Galang and Noel Mallari, who were the President and Vice President of AMBALA, respectively, signed the petition.[70] Petitioner HLI consequently filed an Answer to the AMBALA petition.[71]

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our rights must be properly recognized by delivering to us what is due to us which must be strictly followed by HLI; . . ."

"6. We will be moving for the immediate implementation of the law to have the portions so far covered under the CARP be finally distributed to the HLI farmers in general if only to protect our long awaited dreams to come into reality." (*Rollo,* Vol. 1, at 155-156)

[66] *Rollo,* Vol. 1, at 157-158.

[67] *Rollo,* Vol. 1, at 159-174.

[68] ". . . HLI would like to reiterate its position that its Stock Distribution Option (SDO) is impervious to any nullification, termination, abrogation, renegotiation or any appellation its detractors [may] want to christen their move. For how could they ask for the cancellation of an SDO (and its Certificate of Compliance) that has strictly complied with the provisions of both Rep. Act No. 6657 and its implementing rules under Administrative Order No. 10 on stock distribution?" (*Id.* at 172)

[69] "Petisyon (Para sa Pagpapawalang Bisa sa Stock Distribution Option [SDO], Pagpapatigil sa Pagpapalit Gamit ng Lupa at Pamamahagi ng Lupaing Napapaloob sa Hacienda Luisita, Inc.)"; *rollo,* Vol. 1, at 369-375.

[70] *Rollo,* Vol. 1, at 379.

[71] Opposition dated 21 January 2005; *rollo,* Vol. 1, at 184-192.

On 22 November 2004, then DAR Secretary Rene Villa created a Special Task Force on the Hacienda Luisita stock distribution option plan to review the terms and conditions of the SDOA, and evaluate the compliance reports and the merits of the two petitions.[72] On 15 August 2005, the DAR created a Special Team to reinforce the Special Task Force.

On 22 September 2005, the DAR's Special Team issued the Terminal Report, where it found that petitioner HLI had not complied with its obligations under the law on the implementation of the stock distribution plan.[73] Specifically, the Terminal Report identified the following defects and violations:[74] (a) absence of the certificate of compliance since the stock distribution option plan had yet to be fully completed; (b) the prolonged implementation of the distribution of shares to FWBs for a thirty-year period; (c) conversion of portions of the Hacienda Luisita farm (500 hectares) for non-agricultural uses; and (d) distribution of shares based on the number of days worked by the FWBs.

On 30 September 2005, the DAR Secretary, using the Terminal Report as basis, recommended to the PARC Executive Committee the recall/revocation of the approval of the SDOA and the compulsory acquisition of petitioner HLI's agricultural lands. In reply to the DAR Secretary's recommendations, the PARC Executive Committee created a PARC ExCom Validation Committee to review and validate the DAR Secretary's findings.[75]

On 12 October 2005, fourteen FWBs allegedly filed their position paper before the PARC assailing its failure to tackle the constitutionality of Section 31 of the CARL and limiting its basis for invalidating the SDOA for violating the said provision and its implementing rules.[76]

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[72] DAR Special Order No. 789, Series of 2004; *rollo,* Vol. 1, at 679-680.

[73] *Rollo,* Vol. 1, at 386-405.

[74] Terminal Report at 14-19; *rollo,* Vol. 1, at 399-404.

[75] PARC Resolution No. 2005-SP-01.

[76] Respondent-intervenor FARM's Memorandum dated 24 September 2010, at 11; *rollo*, Vol. 3, at 3816.

On 29 November 2005, private respondents Supervisory Group and AMBALA, through Atty. Jobert Pahilga of the Sentro Para sa Tunay na Repormang Agraryo Foundation (SENTRA), filed their Memorandum arguing that the SDOA with petitioner HLI was a "big mistake and a monumental failure."[77] The constitutionality of the CARL's provisions allowing for the stock distribution option itself was, however, not raised.

On 22 December 2005, after conducting hearings and receiving the memoranda filed by the parties, the PARC issued Resolution No. 2005-32-01 (the questioned PARC Resolution), which affirmed the recommendation to recall/revoke the stock distribution plan of TADECO and petitioner HLI, and placed their lands under compulsory coverage or mandated land acquisition scheme of the CARP. The dispositive portion of the questioned PARC Resolution reads:

> NOW, THEREFORE, on motion duly seconded, RESOLVED, as it is HEREBY RESOLVED, to approve and confirm the recommendation of the PARC Executive Committee adopting *in toto* the report of the PARC ExCom Validation Committee affirming the recommendation of the DAR **to recall/revoke the SDO plan of Tarlac Development Corporation/Hacienda Luisita Incorporated**.
>
> RESOLVED, further, that the lands subject of the recalled/revoked TDC/HLI SDO plan be forthwith **placed under compulsory coverage or mandated land acquisition scheme** of the Comprehensive Agrarian Reform Program.[78] (Emphasis supplied)

Pursuant to the questioned PARC Resolution, then DAR Secretary Nasser Pangandaman (public respondent Pangandaman) ordered the acquisition and distribution of the entire agricultural landholdings of petitioner HLI under the compulsory acquisition scheme of the CARL.[79]

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[77] Private respondents Supervisory Group and AMBALA Memorandum dated 25 November 2005; *rollo*, Vol. 1, at 711-729.

[78] PARC Resolution No. 2005-32-01; *rollo*, Vol. 1, at 100-101.

[79] "Pursuant to the decision of the Presidential Agrarian Reform (PARC), as contained in the PARC Resolution No. 05-32-01 S.2005, revoking/recalling

On 02 January 2006, petitioner HLI moved for a reconsideration of the PARC Resolution.[80] Private respondents Supervisory Group and AMBALA, together with the United Luisita Worker's Union (ULWU) as intervenor, consequently filed their opposition to petitioner HLI's motion for reconsideration.[81]

The DAR subsequently issued several notices of coverage over the lands in Hacienda Luisita in the name of TADECO/HLI:

Table of Covered Lands of Hacienda Luisita

Location	Pasajes, Municipality of Concepcion[82]	San Miguel, Luisita, Ungot and Bantog in Tarlac[83]	Dumarals, Sierra, Lapaz[84]
Grand Total of Areas under the Titles (in hectares)	1,909.5365	2,736.6949	1,291.9457
Cancelled	98.7511	690.1578	236.8159
Canal/Road	1.1736	6.8949	30.5083
Capable	1,809.6118	2,069.6422[85]	1,024.6215

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the Stock Distribution Scheme granted to Hacienda Luisita Inc., you are hereby directed to immediately initiate appropriate action to acquire and distribute the entire Hacienda Luisita agricultural landholding under the Compulsory Acquisition Scheme of the Comprehensive Agrarian Reform Program, subject to the retention limits prescribed under R.A. 6657, as amended." (Respondent Pangandaman's DAR Memorandum dated 23 December 2005 [*rollo*, Vol. 1, at 213]; see also Memorandum dated 27 December 2005 of Undersecretary Narciso Nieto [*rollo*, Vol. 1, at 214])

[80] *Rollo*, Vol. 1, at 107-143.

[81] Opposition to Motion for Reconsideration and Motion for Immediate and Expeditious Execution of PARC Resolution dated 16 January 2006, filed by Atty. Jobert Pahilga of SENTRA and Atty. Romeo Capulong of the Public Interest Law Center. (*Rollo*, Vol. 1, at 771-781)

[82] Notice of Coverage dated 02 January 2006; *rollo*, Vol. 2, at 1407-1409.

[83] Notice of Coverage dated 02 January 2006; *rollo*, Vol. 2, at 1410-1414.

[84] Notice of Coverage dated 02 January 2006; *rollo*, Vol. 1, at 103-106 and *rollo*, Vol. 2, at 1415-1418.

[85] This Notice of Coverage identified TCT No. 236741 in the name of petitioner HLI, a portion of which (341.4507 hectares) was ordered converted

The Hacienda Luisita lands in these notices of coverage also embraced the 300-hectare lot that was earlier converted by the DAR for industrial use and now titled in the name of LIPCO, including the two titles transferred to RCBC through a *dacion en pago*.[86] However, the DAR *motu proprio* desisted from implementing the order of compulsory coverage over the said lands, in spite of the notices of coverage.[87]

Acting on the pending motion for reconsideration, the PARC Excom Validation Committee — headed by Undersecretary Ernesto Pineda of the Department of Justice — recommended the dismissal of petitioner HLI's motion.[88] This recommendation was adopted *in toto* by the PARC Council.[89]

Thereafter, 5,364 individuals claiming to be *bona fide* FWBs signed and filed with the DAR hundreds of separate petitions.[90] All of them claimed that they had freely entered the SDOA with petitioner HLI and prayed that the SDOA not be cancelled by the DAR.

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by the DAR for industrial use. (TCT No. 236741 [*rollo,* Vol. 2, at 1427-1468]; DAR Conversion Order No. 0306017074-764-95, Series of 1996 [*rollo,* Vol. 1, at 651-664]) It likewise covered several lots under TCT No. 310986 in the name of LIPCO, which were also converted to industrial lands. (TCT No. 310986 [*rollo,* Vol. 2, at 1715-1717]; LIPCO Petition-in-Intervention dated 22 November 2007, par. 3-5, at 17-19 [*rollo,* Vol. 2, at 1561-1563])

[86] RCBC's Petition-in-Intervention dated 18 October 2007, par. 21, at 24; *rollo,* Vol. 2, at 1383.

[87] "In the interest of substantial justice and orderly proceedings within the context of procedural due process, the directive to temporarily cease and desist from implementing the coverage is hereby reiterated and the same to remain effective until the matter is resolved." (DAR Memorandum dated 07 February 2006; *rollo,* Vol. 1, at 227)

[88] ExCom Validation Committee Resolution dated 24 March 2006; *rollo,* Vol. 1, at 408-423.

[89] PARC Council Resolution No. 2006-34-01 dated 03 May 2006; *rollo,* Vol. 1, at 407-424.

[90] A Petition to Maintain Stock Distribution Option Agreement and three hundred ten separate petitions entitled "Petisyon sa Kagawaran ng Repormang Pansakahan" filed by 5,364 FWBs. (*rollo,* Vol. 1, at 987-1307)

PROCEEDINGS IN THE COURT

On 01 February 2006, without awaiting the resolution of its pending motion for reconsideration, petitioner HLI filed the instant Rule 65 Petition to nullify the questioned PARC Resolution.[91] Petitioner HLI included in the Petition a prayer for a temporary restraining order to hold the implementation of the questioned PARC Resolution, and to prevent compulsory coverage of the lands under the CARL. Despite the DAR's own order to cease and desist from implementing the Notices of Coverage, petitioner HLI, nevertheless, alleges that the DAR was still bent on implementing the questioned PARC Resolution.[92]

On 14 June 2006, the Court granted petitioner HLI's preliminary prayer for a temporary restraining order and enjoined public respondents from implementing the questioned PARC Resolution.[93]

On 13 July 2006, public respondents, through the Office of the Solicitor General, filed their Comment.[94]

On 05 December 2006, private respondent Noel Mallari filed a Manifestation and Motion with Comment Attached.[95] Private respondent Mallari manifested that he and other members of AMBALA had left the organization and founded the Farmworkers Agrarian Reform Movement, Inc. (FARM). Respondent Mallari was joined and supported by some other FWBs, who affixed their signatures in the Petition.[96] They prayed that the new organization be allowed to enter its appearance and/or intervene in the instant case, and that the instant Petition be dismissed. Respondent Mallari subsequently filed a supplement to the earlier

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[91] Petition; *rollo,* Vol. 1, at 3-193.

[92] Petitioner HLI Manifestation and Urgent Motion for Issuance of Temporary Restraining Order dated 18 May 2006; *rollo,* Vol. 1, at 233-254.

[93] Resolution; *rollo,* Vol. 1, at 257-259.

[94] *Rollo,* Vol. 1, at 334-428.

[95] *Rollo,* Vol. 1, at 436-519.

[96] *Rollo,* Vol. 1, at 460-517.

comment, raising therein as a substantive issue the unconstitutionality of the stock distribution option under Section 31 of the CARL.[97]

On 22 December 2006, private respondents Supervisory Group[98] and AMBALA (Galang Group)[99] filed their own Comment/Opposition, through their counsel, Atty. Pahilga of SENTRA, who had earlier represented them in the PARC proceedings below.[100]

On 30 May 2007, petitioner HLI filed a Consolidated Reply[101] to the comments filed by the two private respondents[102] and public respondents.[103] Petitioner assailed the fact that private respondents did not actually represent *bona fide* FWBs, as shown by the numerous and separate petitions signed by 5,364 FWBs filed in the PARC, who had expressed their desire to maintain the SDOA.[104]

On 30 October 2007, petitioner-in-intervention RCBC moved to intervene in the instant case considering that the two subdivided lots of Hacienda Luisita that were transferred to it by virtue of the *dacion en pago* were included in the notices of coverage issued under the authority of the questioned PARC Resolution.[105] On 27 November 2007, LIPCO likewise moved to intervene in

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[97] "Section 31 of the Comprehensive Agrarian Reform Law is unconstitutional in so far as it fails to effect agrarian land reform that covers a redistribution of both wealth and power." (Supplemental Comment, through collaborating counsel Mary Ann dela Peña of the PEACE Foundation, Inc.; *rollo*, Vol. 1, at 822-837).

[98] The Supervisory Group was then represented by Windsor Andaya and Jose Julio Zuniga.

[99] AMBALA was then represented by Rene Galang.

[100] *Rollo*, Vol. 1, at 530-770.

[101] *Rollo*, Vol. 1, at 856-979.

[102] (a) Private respondents Supervisory Group and AMBALA; and (b) private respondents Mallari and FARM.

[103] Public respondents PARC and DAR Secretary.

[104] Consolidated Reply at 7-17; *rollo*, Vol. 1, at 862-872.

[105] *Rollo*, Vol. 2, at 1350-1533.

the instant case, considering that the DAR's notices of coverage also included the balance of 115 hectares of converted industrial land under TCT No. 310986, which remained under its name.[106]

Public respondents filed their consolidated comment to the petitions-in-intervention of RCBC and LIPCO, arguing *inter alia* that the two intervenor corporations were not innocent purchasers of land and that TADECO and petitioner HLI reneged in this commitment to keep Hacienda Luisita "intact and unfragmented."[107] In contrast, petitioner HLI raised no objection to the intervention of RCBC and LIPCO. Thereafter, RCBC and LIPCO filed their respective replies to public respondent's consolidated comment.[108]

The Court then required: (a) petitioner HLI to submit certified true copies of the stock and transfer books submitted to the Securities and Exchange Commission showing compliance with the SDOA; and (b) the DAR Secretary to submit the list of qualified FWBs in Hacienda Luisita at the time the SDOA was signed on 11 May 1989.[109] In compliance, petitioner HLI submitted a summary of stock distribution to beneficiaries from 1989-1990 to 2003-2004, as follows:[110]

Summary of Shares of Stock Distribution CY – 1989-1990 to CY – 2003-2004				
Status	*CTR*	*Distributed Shares of Stock*	*Accelerated Shares of Stock*	*Total Shares of Stock*
Fortnightly	882	11,309,418	11,309,418	22,618,836
Weeklies	8,597	47,948,819	47,948,819	95,897,638

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[106] *Rollo,* Vol. 2, at 1535-1734.

[107] *Rollo,* Vol. 2, at 1767-1793.

[108] LIPCO Reply dated 06 October 2008 (*rollo,* Vol. 2, at 1800-1829); RCBC Reply dated 12 September 2008 (*rollo,* Vol. 2, at 1835-1871).

[109] Resolution dated 01 June 2009; *rollo,* Vol. 2, at 1880-1881.

[110] Petitioner HLI's Compliance dated 07 July 2009; *rollo,* Vol. 2, at 1905-2208.

Trash Project	2,476	104,374	104,374	208,748
TOTAL	**11,955**[111]	59,362,611	59,362,611	**118,725,222**[112]

Public respondents likewise presented to the Court a list of qualified FWBs who signed the SDOA on 11 May 1989.[113]

On 11 August 2010, petitioner HLI and private respondents AMBALA (principally through one of its factions, the "Mallari Group"),[114] the Supervisory Group[115] and the ULWU,[116] with the concurrence of TADECO, submitted to the Court a proposed compromise agreement for approval.[117] Under the proposed compromise agreement, the parties would respect the individual decisions of the FWBs as to whether they would stay with the stock distribution contained in the SDOA, or would proceed with land distribution.[118] Petitioner HLI subsequently manifested that based on a "census" conducted on 6-8 August 2010 among the allegedly 10,502 qualified FWBs, 7,302 voted for stock distribution and 139 voted for land distribution.[119]

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[111] The 11,955 recipients of the shares were later on "sanitized" by petitioner HLI and certified to be only **10,502 FWBs**, which is 1,453 less than the original number. (Certification dated 05 August 2010; *rollo*, Vol. 3, at 2612)

[112] Under the SDOA, the qualified FWBs were entitled only to **118,391,976.85 shares**, based on the proportional value of the agricultural land to the total value of all of petitioner HLI's assets.

[113] Public Respondents Compliance dated 25 August 2009; *rollo*, Vol. 2, at 2213-2492.

[114] Private respondent AMBALA was herein represented by Noel Mallari, who was previously identified in the Petition filed by him in the name of FARM.

[115] Private respondent Supervisory Group was represented by Julio Zuniga and Windsor Andaya.

[116] ULWU was represented by Eldifonso Pingol.

[117] Joint Submission and Motion for Approval of Attached Compromise Agreement dated 10 August 2010; *rollo*, Vol. 3, at 2898-2913.

[118] *Id.*

[119] Petitioner HLI's Manifestation and Motion dated 13 August 2010; *rollo*, Vol. 3, at 2917.

On 11 August 2010, the three groups that signed the proposed compromise agreement, namely, AMBALA-Mallari Group, the Supervisory Group and ULWU, terminated the services of Atty. Pahilga of SENTRA. On 13 August 2010, Atty. Carmelito Santoyo entered his appearance as the new counsel for the three groups.

Private respondent AMBALA, now represented by Rene Galang (AMBALA-Galang Group), through the same Atty. Pahilga of SENTRA, submitted its opposition to the compromise agreement and argued that it was entered into without authority from the FWBs and contained stipulations contrary to law and public policy.[120] Thereafter, Atty. Capulong of the Public Interest Law Center[121] also entered his appearance as lead counsel for Rene Galang and as collaborating Counsel for AMBALA-Galang Group.[122]

Subsequently, the FARM group, through its counsel Atty. Christian Monsod of the Rights Network, moved to intervene in the instant case and sought permission to file their comment-in-intervention.[123] Although it participated through the manifestation and motion[124] previously filed by Noel Mallari, the FARM Group's latest comment-in-intervention was now signed by its officers and members led by Renato Lalic,[125] and excluded Mallari, who had apparently switched sides back to the AMBALA-Mallari Group and joined in the proposed compromise agreement with petitioner HLI.[126] FARM adopted

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[120] Private Respondent AMBALA's Comment/Opposition dated 16 August 2010; *rollo,* Vol. 3, at 2958-2987.

[121] Atty. Capulong of the Public Interest Law Center previously represented AMBALA, the Supervisory Group and ULWU in their consolidated opposition to the motion for reconsideration of petitioner HLI that was filed in the PARC.

[122] Entry of Appearance dated 14 September 2010; *rollo,* Vol. 3, at 3158.

[123] Lalic Group's Motion for Leave to Intervene with Comment-in-Intervention dated 16 August 2010; *rollo,* Vol. 3, at 2988-3009.

[124] Manifestation and Motion with Comment Attached; *rollo,* Vol. 1, at 436-519.

[125] There were 28 signatories to the FARM's Comment-in-Intervention. (*rollo*, Vol. 3, 3003-3006)

[126] FARM's Motion for Leave to Intervene with Comment-in-Intervention dated 16 August 2010, par. 4, at 2; *rollo,* Vol. 3, at 2989.

by reference the earlier manifestation filed on its behalf by Mallari, and prayed for the dismissal of the instant petition.[127] It likewise asked that Section 31 of CARL allowing for stock distribution to farmer beneficiaries be declared unconstitutional. In its Resolution dated 17 August 2010, the Court deferred action on the FARM Group's latest request for intervention.

The Court heard the parties on oral arguments on 18[128] and 24 August 2010.[129]

The Court also created a Special Committee to mediate between the contending parties.[130] However, they failed to reach an acceptable settlement. It must be emphasized that the creation of this Committee should not serve as an indicator of any Court policy on whether mediation can still be ordered in cases filed before it or where oral arguments have already been conducted. To clarify, the Court has **no existing policy** on such matters.

After the oral arguments, the Court required parties to submit their respective memoranda and documents relative thereto.[131] The parties filed the following:

a. Petitioner HLI's Memorandum dated 23 September 2010, praying for the reversal of the questioned PARC Resolution and declaring the notice of coverage null and void;[132]

b. Private respondents AMBALA-Mallari Group, ULWU (Eldifonso Pingol) and Supervisory Group (Zuñiga and Andaya) Memorandum dated 12 September 2010, through Atty. Santoyo, which prayed that the questioned PARC Resolution also be declared null and void and set aside, and the Compromise Agreement dated 06 August 2010 be approved;[133]

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[127] FARM's Comment-in-Intervention dated 16 August 2010, par. 2-3, at 7-5; *rollo,* Vol. 3, at 2997-2998.

[128] Resolution dated 27 July 2010; *rollo,* Vol. 3, at 2558-2559.

[129] Resolution dated 18 August 2010; *rollo,* Vol. 3, at 3024-3027.

[130] Resolution dated 31 August 2010; *rollo,* Vol. 3, at 3060-3062.

[131] Resolution dated 24 August 2010; *rollo,* Vol. 3, at 3055-3057.

[132] *Rollo,* Vol. 3, at 3635-3805.

[133] *Rollo,* Vol. 3, at 3215-3230.

c. Private respondent AMBALA-Galang Group's Memorandum dated 21 September 2010, through Atty. Pahilga of SENTRA, praying for the affirmance of the questioned PARC Resolution and ordering the actual distribution of the agricultural lands to the FWBs;[134]

d. Private respondent AMBALA-Galang Group's Memorandum to Discuss Prejudicial Issues dated 23 September 2010, through Atty. Capulong of the Public Interest Law Center, praying that the Court disregard the compromise agreement and/or referendum and order the distribution of the land to the qualified beneficiaries;[135]

e. Respondent-intervenor FARM Group's Memorandum dated 24 September 2010, through Atty. Monsod of the Rights Network, praying for the declaration of Section 31 of the CARL as unconstitutional and the dismissal of the instant Petition;[136]

f. Public respondents PARC and DAR Memorandum dated 23 September 2010, though the Office of the Solicitor General, praying for the dismissal of the instant Petition;[137]

g. Petitioner-in-intervention LIPCO's Memorandum dated 23 September 2010, arguing that it is an innocent purchaser for value of the lands subject of compulsory coverage under the CARL and that its title cannot be collaterally attacked;[138] and

h. Petitioner-in-intervention RCBC's Memorandum dated 23 September 2010 praying for the reversal and setting aside of the questioned PARC Resolution and exclusion of their lands from the notice of compulsory coverage under the CARL.[139]

Issues

Taking cognizance of the arguments espoused by all of the parties, the Court has simplified the various factual and legal

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[134] *Rollo*, Vol. 3, at 3231-3279.

[135] *Rollo*, Vol. 3, at 4173-4217.

[136] *Rollo*, Vol. 3, at 3806-3931.

[137] *Rollo*, Vol. 3, at 3932-4024.

[138] *Rollo*, Vol. 3, at 3280-3634.

[139] *Rollo*, Vol. 3, at 4219-4473.

controversies raised and will limit its disposition to the following matters:

I. Whether the parties, specifically private respondents Supervisory Group, AMBALA, FARM and ULWU, have a real interest in the present controversy involving the coverage of the Hacienda Luisita land;

II. Whether we may rule on the constitutional challenge against the validity of a stock distribution plan under Section 31 of the CARL;

III. Whether the PARC or the SEC has jurisdiction over the issue of validity of the SDOA and, consequently, the authority to affirm or revoke the same;

IV. Whether there is a legal and factual basis to revoke the SDOA; and

V. Whether the purchasers or transferees of the converted lands in Hacienda Luisita are qualified to be innocent purchasers for value.

Ruling

I.

Private respondents Supervisory Group AMBALA, FARM and ULWU, representing qualified farm worker beneficiaries entitled to the benefits under the SDOA, are real parties in interest in the instant case.

To qualify a person to be a real party in interest in whose name an action must be prosecuted,[140] he must appear to be the present real owner of the right sought to be enforced.[141] Interest within the meaning of the rule means material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest

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[140] "A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest." (Rules of Court, Rule 3, Sec. 2)

[141] *National Housing Authority v. Magat*, G.R. No. 164244, 30 July 2009, 594 SCRA 356, citing *Shipside, Inc. v. Court of Appeals*, 404 Phil. 981, 998 (2001) and *Pioneer Insurance & Surety Corporation v. Court of Appeals*, G.R. No. 84197, 28 July 1989, 175 SCRA 668.

in the question involved, or a mere incidental interest.[142] It is distinguished from a mere expectancy or a future, contingent or subordinate.[143]

In filing the Petition/Protest with the DAR, private respondent Supervisory Group primarily sought the renegotiation of the SDOA with petitioner HLI. Private respondent claimed that its members were entitled to the rights and privileges under the SDOA but were not able to enjoy most of them.[144]

With respect to the Supervisory Group, it appears the sixty-two (62) signatories of private respondent Supervisory Group's Petition/Protest in the DAR were awarded a total of 1,073,369 shares, as detailed in the signature sheet.[145] The list submitted by petitioner HLI to the Court confirmed that private respondent Supervisory Group's spokespersons — Jose Julio Zuñiga and Windsor Andaya — were beneficiaries and recipients of shares under the SDOA from 1989-2004.[146] Public respondents' records even show that Zuñiga was one of the FWBs who originally signed the SDOA in 1989.[147] Having been recipients of the shares

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[142] *Sumalo Homeowners Association of Hermosa, Bataan v. Litton, et al.*, G.R. No. 146061, 31 August 2006, 500 SCRA 385, citing *VSC Commercial Enterprises v. Court of Appeals*, G.R. No. 121159, 16 December 2002, 394 SCRA 74, 79.

[143] *Id.*

[144] "1. That while we adhere to the law, we equally make manifestation that we do not now enjoy most of the rights and privileges that we are supposed to enjoy as provided in our Memorandum of Agreement (SDOA) with the Hacienda Luisita, Inc. as such but not limited to the 1 per cent share from the HLI which represents our shares as supervisors during the transition period; . . ." (Supervisory Group's Petition/Protest, par.1, at 1; *rollo*, Vol. 1, at 153)

[145] *Rollo*, Vol. 1, at 157-158.

[146] As indicated in the signature sheet of the Petition/Protest, the list submitted confirmed that Zuñiga and Andaya both received 15,633 and 19,565 shares from the years 1989 to 2004. After the Petition/Protest was filed in the DAR, they again received an equivalent number of shares ("accelerated shares"), and thus doubling their individual shareholdings to 31,266 shares (Zuñiga) and 39,130 shares (Andaya). (Annex "A" of petitioner HLI's Compliance dated 07 July 2009; *rollo*, Vol. 2, at 1913 and 1932).

[147] DAR Certification dated 24 August 2009; *rollo*, Vol. 2, at 2329.

of stock and other benefits under the SDOA, private respondent Supervisory Group and its members clearly have a real interest in the validity and/or implementation of the SDOA. As real parties in interest under the Rules, they have standing to raise questions regarding the same and pursue an action with the proper authority.

With respect to AMBALA (both the Mallari and Galang Group), private respondent AMBALA filed the "*Petisyon*" in the DAR as qualified FWBs entitled to receive benefits under the SDOA. Rene Galang and Noel Mallari (President and Vice-President of private respondent AMBALA) represented themselves as leaders of qualified FWBs. They demanded from petitioner HLI, among others, the payment of their shares from the sale of converted lands and alternatively, the distribution of the Hacienda Luisita lands under compulsory acquisition in the CARL. Similar to Mr. Zuñiga of private respondent Supervisory Group, Mr. Mallari's standing to question the SDOA arises from his status as one of the original signatories thereto.[148] Clearly, their substantial and material interest derives from the fact that they were entitled to benefits under the SDOA, which they had previously agreed to and signed.

The representatives of private respondent AMBALA were also recipients of shares of stock under the SDOA.[149] Even if Galang, as head of private respondent AMBALA, allegedly started his employment with the company only in June 1990 after the SDOA was signed,[150] he still possesses a real interest in the agreement because he was identified as one of the beneficiaries of the stock distribution option. Therefore, any ruling on the SDOA with respect to its validity or implementation will invariably affect their rights and that of other members of private respondent AMBALA, who have claims under the said agreement.

In any case, petitioner HLI has expressly acknowledged that private respondents AMBALA and Supervisory Group are real

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[148] DAR Certification dated 24 August 2009; *rollo*, Vol. 2, at 2413.

[149] Annex "A" of petitioner HLI's Compliance dated 07 July 2009; *rollo*, Vol. 2, at 1920, 2032, 2105.

[150] Petitioner HLI's Consolidated Reply dated 29 May 2007, para 2.2.1 (a), at 14; *rollo*, Vol. 1, at 869.

parties-in-interest with respect to filing the petition before the DAR.[151] Petitioner HLI's acknowledgement of private respondents' interest in the case may have been precipitated by their proposed compromise agreement submitted for approval to the Court.[152] Regardless of the Court's resolution of the proposed compromise agreement, petitioner HLI's admission foreclosed the issue as to private respondents' interest and/or rights as qualified FWBs in the present action to question the SDOA.

The members of the AMBALA Galang Group, which opposed the compromise agreement with petitioner HLI, likewise claim rights under the SDOA as FWBs and, hence, also possess a real interest in this case. It will be recalled that the group is represented by Rene Galang, who was the President of AMBALA at the time the complaint before the PARC proceedings was filed.[153] Thereafter, the private respondent AMBALA split into two factions (Mallari Group and Galang Group), presumably arising from their disagreement with respect to the proposed compromise agreement and the change of counsel. The AMBALA Mallari Group, which was represented by Atty. Santoyo, favored the approval of the compromise agreement, while the AMBALA Galang Group, insisted on land distribution and retained its previous counsel, Atty. Pahilga of SENTRA.[154] In any event,

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[151] "The **petitioners before the DAR/PARC are real parties-in-interest**, namely private respondents RENE GALANG and NOEL MALLARI who signed the '*petisyon*' of the Alyansa ng mga Manggawang Bukid ng Hacienda Luisita (AMBALA) filed with the Department of Agrarian Reform (DAR) and the sixty-two (62) farmworkers who signed the 'petition/protest' filed with the DAR on October 14, 2003, led by private respondents JOSE JULIO SUNIGA and WINDSOR ANDAYA"; (Petitioner HLI's Memorandum dated 23 September 2010, par. 6.1, at 73; *rollo*, Vol. 3, at 3715)

[152] Joint Submission and Motion for Approval of Attached Compromise Agreement dated 10 August 2010; *rollo*, Vol. 3, at 2898-2913.

[153] "Petisyon (Para sa Pagpapawalang Bisa sa Stock Distribution Option [SDO], Pagpapatigil sa Pagpapalit Gamit ng Lupa at Pamamahagi ng Lupaing Napapaloob sa Hacienda Luisita, Inc.)"; *rollo*, Vol. 1, at 369-375.

[154] Rene Galang was represented in his individual capacity by Atty. Capulong of the Public Interest Law Center. But Atty. Capulong was also the collaborating counsel representing the AMBALA Galang Group. (Entry of Appearance dated14 September 2010; *rollo*, Vol. 3, at 3158)

Rene Galang, similar to Noel Mallari, also received shares of stocks from petitioner HLI under the SDOA,[155] and thus, has a real interest in the outcome of the case.

On the other hand, FARM was the break-away group from AMBALA, which was headed by Noel Mallari when it first entered its appearance in the Court's proceedings.[156] When Mallari returned to AMBALA, the officers and members of the FARM continued to intervene in the proceedings headed by Renato Lalic, and were represented by Atty. Monsod of the Rights Network. Members of the FARM all claim to have been long-term occupants, residents of and workers at the Hacienda Luisita lands, and that they also own shares of petitioner HLI and homelots arising from the SDOA.[157] As beneficiaries under the SDOA, members of FARM are also real parties in interest since they will be directly affected by the validity or invalidity of the SDOA.

Finally, ULWU first intervened in the proceeding at the PARC level, when it joined the Supervisory Group and AMBALA in opposing petitioner HLI's motion for reconsideration of the questioned PARC resolution.[158] However, ULWU, together with the other two groups joined petitioner HLI in seeking the Court's approval of the proposed compromise agreement. There is no denying that ULWU also has standing in the instant case, since it not only received benefits under the SDOA, but also dealt with petitioner HLI in entering into a compromise agreement.

Ultimately, qualified FWBs who originally consented to the SDOA or those who are entitled to and/or received benefits

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[155] Rene Galang received 47,216 shares from petitioner HLI. (*Rollo*, Vol. 2, at 1920)

[156] *Rollo,* Vol. 1, at 436-519.

[157] FARM's Memorandum dated 24 September 2010, at 111-112; *rollo*, Vol. 3, at 3915-3916.

[158] Opposition to Motion for Reconsideration and Motion for Immediate and Expeditious Execution of PARC Resolution dated 16 January 2006, filed by Atty. Jobert Pahilga of SENTRA and Atty. Romeo Capulong of the Public Interest Law Center. (*Rollo*, Vol. 1, at 771-781)

under the said agreement have a substantial interest in the adjudication of the status and legitimacy of the SDOA.

Petitioners-in-Intervention RCBC and LIPCO are Real Parties in Interest.

Petitioners-in-intervention RCBC and LIPCO have a legal and substantial interest as the present owners of the converted lands subject of compulsory coverage under the questioned PARC Resolution.[159] The rights of petitioners-in-intervention over the converted lands, which were transferred to them by petitioner HLI and Centennary Holdings, will be affected by the revocation of the SDOA and the subsequent inclusion of the transferred properties in compulsory acquisition. Their interest stems from being owners of land that was included in the notice of compulsory coverage. Their rights over portions of the Hacienda Luisita lands, previously owned by petitioner HLI and converted into industrial lands by the DAR, will be directly affected if the DAR is permitted to expropriate the same for distribution to qualified FWBs under the CARL. Hence, they have a substantial and material interest in the outcome of the questioned PARC Resolution insofar as it may possibly deprive them of their rights over the lands they purchased.

II.

The constitutional validity of the stock distribution option under the CARL was not timely raised and is not the *lis mota* in this case.

Respondent-intervenor FARM questioned the validity of the stock distribution option of a corporate landowner under Section 31 of the CARL on the ground that it is in violation of the constitutional provision on agrarian reform, specifically the distribution of land to the farmers.[160] Respondent-intervenor

[159] The Court had earlier granted the petition-in-intervention of RCBC and noted the petition-in-intervention of LIPCO. (Resolution dated 10 December 2007)

[160] Respondent-intervenor FARM's Memorandum dated 24 September 2010, at 14-45; *rollo*, Vol. 3, at 3819-3850.

argued that the stock distribution option was not one of the modes intended by the agrarian reform policy in giving "land to the landless." In response, petitioner HLI countered that the issue of the CARL's constitutionality cannot be collaterally attacked.[161]

Before the Court can exercise its power to pass upon the issue of constitutionality, the following requisites must be present:

1. There must be an actual case or controversy calling for the exercise of judicial power;

2. The person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

3. The question of constitutionality must be raised at the earliest opportunity; and

4. The issue of constitutionality must be the very *lis mota* of the case.[162]

Although the first two requisites are present, FARM has not shown compliance with the remaining two requisites.

With respect to the timeliness of the issue, respondent-intervenor FARM did not raise the constitutional question at the earliest possible time. The petitions filed in the PARC, which precipitated the present case, did not contain any constitutional challenge against the stock distribution option under the CARL. As previous members of private respondent AMBALA, nothing prevented respondent-intervenor FARM from arguing on the purported constitutional infirmity of a stock distribution option as opposed to a direct land transfer, in the AMBALA Petition in the PARC proceedings below.

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[161] Petitioner HLI's Memorandum dated 23 September 2010, at 76-80; *rollo*, Vol. 3, at 3718-3722.

[162] *Biraogo v. Philippine Truth Commission*, G.R. Nos. 192935 & 193036, 07 December 2010, citing *Senate of the Philippines v. Ermita*, G.R. No. 169777, 20 April 2006, 488 SCRA 1, 35, and *Francisco v. House of Representatives*, 460 Phil. 830, 842 (2003).

Respondent-intervenor FARM would argue that it raised the constitutionality issue in its position paper at the level of the PARC.[163] However, this is a late attempt on its part to remedy the situation and comply with the foregoing requisite on timeliness in the exercise of judicial review. Nothing in the initiatory petitions of private respondents Supervisory Group and AMBALA assailed the inherent invalidity of stock distribution options as provided in Section 31 of the CARL.

Respondent-intervenor FARM posits that it fully complied with the requirement of timeliness under the doctrine of judicial review since the earliest possible opportunity to raise the issue must be with a **court** with the competence to resolve the constitutional question, citing as basis *Serrano v. Gallant Maritime Services, Inc*.[164] This case is significantly different from *Serrano* as to render the latter's legal conclusions inapplicable to the present situation.

In *Serrano*, the question of the validity of the money claims clause of the Migrant Workers and Overseas Filipinos Act of 1995[165] was timely raised at the very first instance in a competent court, namely in Antonio Serrano's petition for *certiorari* filed with the Court of Appeals.[166] In sharp contrast, the question of the constitutionality of the CARL in this case was belatedly

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[163] "As regards the third requisite of timeliness of raising the constitutionality issue, Respondents-Intervenors have already raised the constitutional issue in their position paper at the level of the Presidential Reform Council (PARC)." (Respondent-intervenor FARM's Memorandum dated 24 September 2010, at 42; *rollo*, Vol. 3, at 3847)

[164] G.R. No. 167614, 24 March 2009, 582 SCRA 254.

[165] "Sec. 10. *Money Claims*. — … In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the workers shall be entitled to the full reimbursement of his placement fee with interest of twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract or for three (3) months for every year of the unexpired term, whichever is less." (Republic Act No. 8042, Sec. 10)

[166] "Petitioner (Serrano) filed a Motion for Partial Reconsideration (with the NLRC), but this time he **questioned the constitutionality of the subject clause**. The NLRC denied the motion."

included in respondent-intervenor FARM's supplemental comment[167] after an earlier manifestation and motion had already been filed. Thus, respondent-intervenor's earliest opportunity to raise the constitutionality of Section 31 of the CARL was in the very first pleading it filed in this Court, and not in a supplemental comment.

Even assuming *arguendo* that the rule requiring the timeliness of the constitutional question can be relaxed, the Court must refrain from making a final determination on the constitutional validity of a stock distribution option at this time because it is not the *lis mota* of the present controversy and the case can be disposed of on some other ground.

The Court will not touch the issue of constitutionality unless it is truly unavoidable and is the very *lis mota* or *crux* of the controversy.[168] In the seminal case of *Garcia v. Executive Secretary*, the Court explained the concept of *lis mota* as a requirement of judicial review in this wise:

Lis mota — the fourth requirement to satisfy before this Court will undertake judicial review — means that the Court will not pass upon a question of unconstitutionality, although properly presented, if the case can be disposed of on some other ground, such as the application of the statute or the general law. The petitioner must be able to show that the case cannot be legally resolved unless the constitutional question raised is determined. This requirement is

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"Petitioner filed a Petition for *Certiorari* with the CA, **reiterating the constitutional challenge against the subject clause**. After initially dismissing the petition on a technicality, the CA eventually gave due course to it, as directed by this Court in its Resolution dated August 7, 2003 which granted the petition for *certiorari*, docketed as G.R. No. 151833, filed by petitioner." (*Serrano v. Gallant Maritime Services, supra* note 164)

[167] "Section 31 of the Comprehensive Agrarian Reform Law is unconstitutional in so far as it fails to effect agrarian land reform that covers a redistribution of both wealth and power." (Supplemental Comment, through collaborating counsel Mary Ann dela Peña of the PEACE Foundation, Inc.; *rollo*, Vol. 1, at 822-837).

[168] *Francisco v. House of Representatives*, G.R. Nos. 160261, 160262, 160263, 160277, 160292, 160295, 160310, 160318, 160342, 160343, and 160360, 10 November 2003, 415 SCRA 44.

based on the rule that every law has in its favor the presumption of constitutionality; to justify its nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative, or argumentative.[169]

A court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid unless such question is raised by the parties; when raised, if the record presents some other ground upon which the court may rest its judgment, the latter course will be adopted and the constitutional question will be left for consideration until a case arises wherein a decision upon such question will be unavoidable.[170] The Court will not shirk its duty of wielding the power of judicial review in the face of gross and blatant acts committed by other branches of government in direct violation of the Constitution; but neither will it be overly eager to brandish it when there are other available grounds that would avoid a constitutional clash.

It will be recalled that what the qualified beneficiaries assailed in the PARC proceedings was the failure on the part of petitioner HLI to fulfill its obligations under the SDOA, and what they prayed for was for the lands to be the subject of direct land transfer. The question of constitutionality of a stock distribution option can be avoided simply by limiting the present inquiry on the provisions of the SDOA and its implementation. Whether the PARC committed grave abuse of discretion in recalling or revoking the approval of the SDOA need not involve a declaration of unconstitutionality of the provisions of the CARL on stock distribution.

There is no "paramount public interest" that compels this Court to rule on the question of constitutionality. As a legislative act, the CARL enjoys the presumption of constitutionality.[171]

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[169] *Garcia v. Executive Secretary*, G.R. No. 157584, 02 April 2009, 583 SCRA 119.

[170] *Sotto v. Commission on Elections*, 76 Phil. 516 (1946).

[171] "Any law duly enacted by Congress carries with it the presumption of constitutionality. Before a law may be declared unconstitutional by this

Absent any glaring constitutional violation or evident proof thereof, the Court must uphold the CARL. Indeed, paramount public interest is better served by precluding a finding on the CARL at this point, since such finding could unfairly impact other corporate landowners and farmer beneficiaries under a stock distribution option in other parts of the country[172] who are not parties to the instant case.

While we do not rule on the constitutionality of stock distribution option, we also need to state that there appears to be no clear and unequivocal prohibition under the Constitution that expressly disallows stock distribution option under the provisions on agrarian reform:

> The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless**, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof**. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.[173]

The primary constitutional principle is to allow the tiller to exercise rights of ownership over the lands, but it does not confine this right to absolute direct ownership. Farmworkers are even

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Court, there must be a clear showing that a specific provision of the fundamental law has been violated or transgressed. When there is neither a violation of a specific provision of the Constitution nor any proof showing that there is such a violation, the presumption of constitutionality will prevail and the law must be upheld. To doubt is to sustain." (*Aquino v. COMELEC*, G.R. No. 189793, 07 April 2010, 617 SCRA 623)

[172] As of 26 January 2006, there were thirteen (13) corporate landowners with approved stock distribution option plans for monitoring by the DAR covering 7,703 hectares of private agricultural lands. (DAR Administrative Order No. 01-2006)

[173] CONSTITUTION, Art. XIII, Sec. 4.

allowed to simply have a share in the fruits of the land they till for as long as what they receive is just and fair. The framers of the Constitution established the right of landless farmers and regular farmworkers to own the lands they till directly or collectively, but left the identification of the means of ownership to Congress. This was an important decision, considering that Congress has the better facilities and faculties to adjudge the most appropriate and beneficial methods for the exercise of the constitutional right in cases where dividing a small landholding among a multitude of qualified FWBs would result in parceling out patches of land not viable for individual farming. Whether stock distribution is a valid method identified by Congress for lands owned by a corporation, or whether it is a "loophole" in the CARL to evade land distribution in contravention of the intent of the Constitution, is a question that need not be answered now.

III.

The PARC has jurisdiction over the question of the validity of and/or compliance with the SDOA.

Petitioner HLI assails the jurisdiction of the PARC to recall the SDOA. It argues that the PARC's authority is limited to approval or disapproval of a stock distribution proposal made by a corporate landowner and qualified FWBs; purportedly, this does not include a revocation of the agreement, especially after it has already been implemented. It theorizes that the agreement, once approved by the PARC, "ascends" to the level of an **ordinary civil contract** and thus any action to annul the same must be through the regular courts and not the PARC.[174]

The PARC was created primarily to coordinate the implementation of the comprehensive agrarian reform program (CARP) and to ensure the timely and effective delivery of the

[174] "However, when the corporate landowner and the farmworkers have entered into an [sic] Stock Distribution Agreement (SDOA) as in this case, which the PARC approved, the SDOA has ascended to the level of a civil contract where the parties are governed by the law on contracts under civil law." (Petitioner HLI's Memorandum, par. 4.7.1, at 43; *rollo*, Vol. 3, at 3685)

necessary support services.[175] It was tasked to "formulate and/or **implement** the policies, rules and regulations necessary to implement each component of the CARP, and may authorize any of its members to formulate rules and regulations concerning aspects of agrarian reform falling within their area of responsibility."[176]

With respect to the stock distribution option under the CARL, one of the PARC's powers is to approve a stock distribution plan of corporate land owners.[177] After the DAR Secretary evaluates the stock distribution plan, he shall forward it together with the supporting documents and his recommendations to the PARC, which shall decide whether or not to approve the same.[178]

Petitioner's argument is not persuasive, since it espouses a deprivation of the PARC's authority to effectively implement the policies, rules and regulations of the CARL.

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[175] Executive Order No. 229, Sec. 1.

[176] The policies, rules and regulations for formulation by the PARC included following: (a) Recommended small farm economy areas, which shall be specific by crop and based on thorough technical study and evaluation; (b) The schedule of acquisition and redistribution of specific agrarian reform areas, provided that such acquisition shall not be implemented until all the requirements are completed, including the first payment to the landowners concerned; and (c) Control mechanisms for evaluating the owner's declaration of current fair market value in order to establish the government's compensation offer, taking into account current land transactions in the locality, the landowner's annual income from his land, and other factors. (Executive Order No. 229, Sec. 1)

[177] "If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution **approved by the PARC** within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act." (CARL, Sec. 31, last paragraph)

[178] "After the evaluation of the stock distribution plan submitted by the corporate land-owner applicant to the Secretary of Agrarian Reform, he shall forward the same with all the supporting documents to the Presidential Agrarian Reform Council (PARC), through its Executive Committee, with his recommendation for final action." (Guidelines and Procedures for Corporate Landowners Desiring to Avail Themselves of the Stock Distribution Option under Sec. 31 of R.A. 6657, DAR Administrative Order No. 10-88, Sec. 10)

Under the CARL, the stock distribution option would ordinarily necessitate an outright delivery of the shares to qualified FWBs. This method of distributing shares would be effected within a short period, in much the same speed as that of lands transferred under the first option. In a stock distribution scheme, government approval is necessary in two instances:

1. Approving the proposal for stock distribution option plan or agreement arrived at between the corporate landowner and qualified FWBs (approval of the agreement); and

2. Approving compliance by all the concerned parties of the terms and conditions of the plan or agreement (approval of the compliance).

The first involves a conceptual and theoretical authorization that the terms of the stock distribution are in accordance with the law and agrarian reform policy. The failure to obtain **approval of the agreement** does not preclude the parties from renegotiating the agreement and submitting it again for approval, especially if the PARC raises concerns regarding some of the terms.

The second instance determines whether the parties faithfully implemented and complied with their obligations under the approved agreement. Hence, the failure to obtain **approval of the compliance** demonstrates a defect in the fulfillment of the parties of their responsibilities. This situation occurs if, for example, after a few months from the approval of the agreement, not a single share has been received by any of the qualified FWBs or recorded in the books of the corporate landowner. In fact, the law expressly provides that should the stock transfer not materialize, then the agricultural land of the corporate owners or corporation shall be subject to compulsory coverage.[179]

Petitioner HLI does not question the authority of the PARC with respect to the **approval of the agreement**,[180] but it raises

[179] CARL, Sec. 31, last paragraph.

[180] "There is no question that the PARC has jurisdiction to approve or disapprove the application of corporate landowners to avail of stock distribution under Sec. 31 as an alternative arrangement under Sec. 3 of RA 6657 to land

an issue as to whether the **approval of the compliance** remains within the authority of the PARC. Although the CARL is silent on the latter authority, it is more logical and efficient for this necessary power to remain lodged with the PARC.

Jurisdiction over a subject matter is conferred by law.[181] Section 50 of the CARL and Section 17 of Executive Order No. 229 vests in the DAR the primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all matters involving **the implementation of agrarian reform**.[182] The DAR's primary and exclusive jurisdiction includes authority over agrarian disputes, which also covers "disputes on the **terms and conditions of the transfer of ownership** from landowners to agrarian reform beneficiaries."[183] Congress provides the exclusive jurisdiction of the DAR in agrarian disputes, in this language:

SECTION 50-A. Exclusive Jurisdiction on Agrarian Dispute. — No court or prosecutor's office shall take cognizance of cases pertaining to the implementation of the CARP except those provided under Section 57 of Republic Act No. 6657, as amended. If there is an allegation from any of the parties that the case is agrarian in nature and one of the parties is a farmer, farmworker, or tenant, **the case shall be automatically referred by the judge or the prosecutor to the DAR which shall determine and certify within fifteen (15) days from referral whether an agrarian dispute exists**: Provided, That from the determination of the DAR, an aggrieved party shall have judicial recourse. In cases referred by the municipal trial court and the prosecutor's office, the appeal shall be with the

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redistribution." (Petitioner HLI's Memorandum, par. 4.7.1, at 43; *rollo*, Vol. 3, at 3685)

[181] *Lakeview Golf and Country Club, Inc., v. Luzvimin Samahang Nayon*, G.R. No. 171253, 16 April 2009, 585 SCRA 368.

[182] *Lakeview Golf and Country Club, Inc., v. Luzvimin Samahang Nayon, id.*

[183] "[Agrarian dispute] includes any controversy relating to compensation of lands acquired under this Act and **other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries**, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee." (CARL, Sec. 3-d)

proper regional trial court, and in cases referred by the regional trial court, the appeal shall be to the Court of Appeals. …"[184] (Emphasis supplied)

Since a stock distribution option is an alternative method of transferring ownership of agricultural land to FWBs, any controversy regarding compliance with the approved terms and conditions of such transfer is necessarily an agrarian dispute that is within the primary and exclusive jurisdiction of the DAR, and necessarily the PARC. The function of requiring approval of the compliance of the SDOA is precisely to ensure compliance with the earlier approval. The CARL could not have tolerated a situation where qualified FWBs would be without any recourse against a landowner who failed to live up to its promises under a stock distribution agreement.

General jurisdiction over agrarian disputes over stock distribution agreements necessarily implies a specific authority to monitor and enforce implementation of the same. As distinguished from express powers, implied powers are those that can be inferred or are implicit in the wordings or conferred by necessary or fair implication of the enabling act.[185] Public respondents correctly identified the explanation of *Chavez v. National Housing Authority*,[186] on the doctrine of necessary implication in administrative law, in this wise:

> Basic in administrative law is the doctrine that a government agency or office has express and implied powers based on its charter and other pertinent statutes. Express powers are those powers granted, allocated, and delegated to a government agency or office by express provisions of law. **On the other hand, implied powers are those that can be inferred or are implicit in the wordings of the law or conferred by necessary or fair implication in the enabling act**. In *Angara v. Electoral Commission*, the Court clarified and

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[184] Republic Act No. 9700, Sec. 19.

[185] *Soriano v. Laguardia*, G. R. Nos. 164785 and 165636, 29 April 2009, 587 SCRA 79.

[186] G.R. No. 164527, 15 August 2007, 530 SCRA 235, citing *Angara v. Electoral Commission*, 63 Phil. 139, 177 (1936).

stressed that when a general grant of power is conferred or duty enjoined, **every particular power necessary for the exercise of the one or the performance of the other is also conferred by necessary implication**. It was also explicated that when the statute does not specify the particular method to be followed or used by a government agency in the exercise of the power vested in it by law, said agency has the authority to adopt any reasonable method to carry out its functions. (Emphasis supplied)

It must be clarified that the power to revoke or recall approval of the agreement resides only in the PARC, and does not extend to the DAR. The DAR itself recognized the primacy of the PARC's evaluation and assessment of a stock distribution plan.[187] The continuing authority of the PARC to monitor and ensure proper implementation of a stock distribution option is consistent with its power to order the forfeiture of agricultural lands in case of the landowner's failure to distribute the stocks. The CARL expressly provides for the compulsory coverage of the agricultural lands if there is no distribution of the stocks to qualified FWBs.[188] In fact, the PARC is duty bound to subject the agricultural lands of the landowner to compulsory coverage if stock distribution does not materialize.

In the instant case, the complaints of the qualified FWBs were properly lodged with the PARC, which had earlier given its approval of the agreement but has yet to render approval of the compliance. It must be noted that the SDOA under question is extraordinary since it provided a longer period of thirty years for the distribution of the shares to the qualified FWBs. Rather than immediately awarding the entire lot of shares of stock, petitioner HLI opted to spread out and prolong the distribution. The PARC was not in a position to immediately render approval of the compliance since petitioner HLI still had three decades before it could implement a complete stock distribution in favor of the qualified FWBs.

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[187] "Reservation Clause — Nothing herein shall be construed as precluding the PARC from making its own independent evaluation and assessment of the stock distribution plan of the corporate landowner-applicant and in prescribing other requirements." (DAR Administrative Order No. 10-88, Sec. 12)

[188] CARL, Sec. 31, last par.

Disputes Over the SDOA Are Inherently Agrarian in Nature.

Although petitioner HLI will not deny qualified FWBs a remedy against any claim of non-fulfillment of obligations under the SDOA, it asserts that such remedy is of a class of suits that is not within the ambit of the CARL, but instead falls under the laws on civil contracts[189] or even the Corporation Code.[190] Petitioner HLI is not correct.

The nature of the dispute of the petitions filed in the PARC is inherently agrarian in nature and not simply contractual or corporate.[191] Undeniably, the parties were compelled to agree on an acceptable mode of transfer of land ownership by the pronouncements of the CARL. This was, however, not an ordinary civil contract entered into between two parties standing on equal footing, as in fact land distribution was constitutionally sanctioned to balance the prevailing inequity between rich land owners and poor farmers.

The determination of whether the dispute under a stock distribution option is agrarian, civil or corporate in nature relies on the allegations of the complaint, the purported relationship between the contending parties and the rights sought to be enforced.[192] In this case, petitioner HLI and the farm workers share multiple relationships that can be the source of rights and

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[189] Petitioner HLI's Memorandum, at 31-46; *rollo*, Vol. 3, at 3673-3688.

[190] *Id.*, at 75; *rollo*, Vol. 3, at 3717.

[191] Agrarian dispute includes any controversy relating to compensation of lands acquired and **other terms and conditions of transfer of ownership from landowners to farmworkers, tenants and other agrarian reform beneficiaries**, whether the disputants stand in the proximate relation of farm operator and beneficiary, landowner and tenant, or lessor and lessee. (CARL, Sec. 3 [d])

[192] "The basic rule is that jurisdiction over the subject matter is determined by the allegations in the complaint. Jurisdiction is not affected by the pleas or the theories set up by the defendant in an answer or a motion to dismiss. Otherwise, jurisdiction would become dependent almost entirely upon the whims of the defendant." (*Arzaga v. Copias*, G.R. No. 152404, 28 March 2003, 400 SCRA 148)

obligations between them. Primarily, petitioner HLI's relationship with the farm workers is that of a corporate landowner and qualified beneficiary under the CARL. But they also share an employer-employee relationship, insofar as the farm workers receive salaries and benefits from the corporation. There is likewise a tri-partite civil and contractual relationship arising from the SDOA between petitioner HLI (the spin-off corporation), TADECO (the original corporate landowner), and the qualified FWBs. Finally, the farm workers are also stockholders of petitioner HLI, having been awarded shares under the SDOA. Indeed, these various relationships give rise to distinct rights and prescribe separate remedies under the law.

However, the overriding consideration for the stock distribution agreement under the CARL is the relationship of landowner-farm worker, which was the legal basis for the parties to have entered into the SDOA in the first place. Petitioner HLI and TADECO signed the SDOA precisely because the farm workers who agreed thereto were identified as qualified FWBs entitled to the benefits under the CARL. Similarly, the farm workers' acquisition of the additional status of stockholders of petitioner HLI arose out of their original status as qualified FWBs. Hence, all disputes arising from the stock distribution must be viewed in light of this principal juridical tie of corporate landowner and qualified FWBs. Parties cannot invoke other incidental relationships (civil or corporate) to deprive the PARC of its primary and exclusive jurisdiction over complaints filed by qualified FWBs against a stock distribution agreement, which is invariably an agrarian dispute.

Granting the PARC jurisdiction over disputes involving stock distribution agreements does not diminish the jurisdiction of regular or commercial courts or the SEC; it is merely a recognition of its special competence over the matter of implementation of the CARL, especially when it comes to stock distribution agreements with FWBs. It is absurd to deprive the PARC of jurisdiction simply because civil or corporate causes of action are included and in this case, belatedly, by petitioner HLI.

Considering the several capacities involved under a stock distribution option between a corporate landowner and qualified FWBs, the better rule now is that **all disputes arising from their stock distribution agreement and/or its implementation shall be within the jurisdiction of the PARC** in accordance with its primary and exclusive jurisdiction under the CARL over agrarian disputes.[193]

IV.

There is legal and factual basis to recall/revoke the approval of the SDOA and order the compulsory coverage of the agricultural lands of Hacienda Luisita.

Proceeding to the substantial merits of the case, questioned PARC resolution should be affirmed insofar as it found factual and legal basis to revoke/recall approval of the SDOA between petitioner HLI and the qualified FWBs.

Violating the Integrity of the Pool of the qualified FWBs; Variability in their Number of Shares

The SDOA grossly violated the provisions of the CARL with respect to the stock distribution option when its basis for distributing the shares was made on the ground of its continuing determination of the man-hours served by the qualified FWBs. The rolling policy of petitioner HLI is contrary to the intent of stock distribution option under the CARL.

The CARL provides that a corporate land owner may give its qualified beneficiaries the right to purchase such proportion of the capital stock of the corporation that the agricultural land actually devoted to agricultural activities bears in relation to the company's total assets.[194] In qualifying the ratio of shares to be received by each of the qualified FWBs, the DAR explained that, as a minimum, each of the qualified FWBs would receive an equal number of shares of stock of the same class and value,

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[193] As amended by Republic Act No. 9700, Sec. 19.

[194] CARL, Sec. 31.

with the same rights and features as all other shares.[195] Although the DAR allowed shares of stock to be distributed based on other factors, such as rank, seniority, salary or position, this distribution is in addition to the minimum ratio earlier described, which guarantees a base number of shares for all types of qualified FWBs.[196] Hence, the minimum ratio under a stock distribution scheme is a **fixed value** that should be equally received by all qualified FWBs; meanwhile, the additional shares are **variable** depending on an agreed upon criteria.

The SDOA also provided for a moving distribution of shares of stock based on the "number of days" worked by qualified FWBs, which is undeniably a variable criterion, in violation of the fixed minimum ratio.[197]

There is no error in identifying the qualified FWBs based on the payroll of petitioner HLI as of a fixed point in time. Under

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[195] "The stock distribution plan submitted by the corporate landowner-applicant shall provide for the distribution of an **equal number of shares of stock of the same class and value, with the same rights and features as all other shares**, to each of the qualified beneficiaries. This distribution plan in all cases shall be at least the **minimum ratio** for purposes of compliance with Section 31 of RA 6657. …" (DAR Administrative Order No. 10-88, Sec. 4, 1st par.)

[196] "… On top of the minimum ratio provided under Section 3 of this Implementing Guideline, corporate landowner-applicant may adopt additional stock distribution schemes taking into account factors such as rank, seniority, salary, position and other circumstances which may be deemed desirable as a matter of sound company policy." (DAR Administrative Order No. 10-88, Sec. 4, 1st par.)

[197] "2. The qualified beneficiaries of the stock distribution plan shall be the farmworkers who appear in the annual payroll, inclusive of the permanent and seasonal employees, who are regularly or periodically employed by the SECOND PARTY (Petitioner HLI)."

"3. At the **end of each fiscal year**, for a period of 30 years, the SECOND PARTY shall arrange with the FIRST PARTY (TADECO) the acquisition and distribution to the THIRD PARTY (qualified FWBs) **on the basis of number of days worked** and at no cost to them of one-thirtieth (1/30) of 118,391,3976.85 shares of stock of the capital stock of the SECOND PARTY that are presently owned and held by the FIRST PARTY, until such time as the entire block of 118,391,3976.85 shares shall have been completely acquired and distributed to the THIRD PARTY." (SDOA at p. 3 [*rollo*, Vol. 1, at 149]; emphasis supplied)

the fixed minimum ratio in a stock distribution scheme, persons would be identified as qualified beneficiaries[198] based on whether they appear on the corporate landowner's payroll as farmworkers,[199] regardless of whether they are regular or seasonal or whether they receive compensation in a daily, weekly, monthly or "*pakyaw*" basis. In this case, there were 6,296 farmworkers as of 11 May 1989, who were qualified as beneficiaries at the time of the signing of the SDOA. Thus, each of these farmworkers should have received an equal number of the total shares distributed by petitioner HLI.[200]

However, contrary to above-mentioned fixed minimum ratio, petitioner HLI adopted a wholly variable and mobile criterion — the number of shares would be based on the number of man-days each qualified FWB logged in every year.[201] Instead of receiving an equal amount, farmworkers under the SDOA would receive varying number of shares depending on the man-days rendered.[202]

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[198] "The lands covered by the CARP shall be distributed as much as possible to landless residents of the same *barangay*, or in the absence thereof, landless residents of the same municipality in the following order of priority: (a) agricultural lessees and share tenants; (b) **regular farmworkers**; (c) **seasonal farmworkers**; (d) **other farmworkers**; (e) actual tillers or occupants of public lands; (f) collectives or cooperatives of the above beneficiaries; and (g) others directly working on the land. . . ." (CARL, Sec. 22)

[199] "Farmworker is a natural person who **renders services for value as an employee or laborer in an agricultural enterprise or farm** regardless of whether his compensation is paid on a daily, weekly, monthly or '*pakyaw*' basis." (CARL, Sec. 3 [g])

[200] Assuming *arguendo* that there were 118,391,976.85 shares to be distributed to the 6,296 farmworkers who signed the SDOA, then each of them should have been entitled to a minimum ratio of **18,804.32 shares** in petitioner HLI.

[201] "Considering that the list of qualified worker-beneficiaries is a **mobile one that changes from time to time and will depend on the number of days that they have worked during the year**, there is no fixed number of shares due each qualified worker-beneficiary to speak of and the much-feared dilution of his shares cannot, therefore, possibly take place." (Letter dated 14 November 1989, at 2; *rollo*, Vol. 1, at 1311; emphasis supplied)

[202] "JUSTICE VELASCO: … Your stock distribution option agreement is unique in the sense that **these workers or farmer beneficiaries will get the**

Thus, if some of the 6,296 farmworkers served more man-days than the others, then they would be entitled to more shares. The scheme is in clear violation of the policy of equal number of shares as a minimum ratio for all qualified FWBs.

Worse, the qualified FWBs' entitlement to receipt of shares was made on a rolling basis at the end of each year for the next thirty years. The number of shares was not only variable depending on the number of man-days served, but also on the time period when these man-days were served. Under the SDOA, there would be a yearly and partial distribution of shares to the qualified FWBs based on the annual number of man-days performed. Hence, qualified FWBs who worked in a previous year, but failed to get the same number of man-days or failed to work at all in the succeeding year, would not receive an equivalent number of shares at the end of the year. Moreover, persons who were not part of the original 6,296 farmworkers, but were subsequently employed by petitioner HLI, would still be entitled to annual proportionate shares of stock under the SDOA.[203] Thus, the original FWBs were deprived of their guaranteed equal shareholdings by the proportional allocation of stocks to farmworkers who were not even employed at the time of the signing of the SDOA.[204] The variable determination of the number

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stocks only when they work for the company. Meaning to say, it will be dependent on the work to be performed by these workers or farmer beneficiaries?

ATTY. ASUNCION: That is correct Your Honor they call it man days." (TSN dated 18 August 2010, at 38-38)

[203] "4. As more new workers are hired, throughout the suspended period of 30 years, the lesser be the entitlement of the original farmer beneficiaries considering the policy of HLI under its SDP that the share is determined by the actual day's work, proportionately computed." (PARC Council Resolution No. 2006-34-01 dated 03 May 2006, at 16; *rollo*, Vol. 1, at 422)

[204] Assuming that as claimed by petitioner HLI that 118,391,976 shares of stock have all been completed distributed to the 10,502 stockholders of record (Petitioner HLI's Letter dated 09 June 2005 [*rollo*, Vol. 2, at 2208]; Certification dated 05 August 2010 [*rollo*, Vol. 3, at 2612]) and assuming further that each of them received an equal number of shares, then each of them would have received 11,273.28 shares, which is **59.95%** of **18,804.32 shares** that were supposed to be received by the original 6,296 farmworkers.

of shares to which qualified FWBs were entitled resulted in the **dilution** of their shares, since the number of recipients "ballooned" through time (10,502 FWBs) but the number of stocks to be distributed remained the same.

In fact, the policy of "no-work-no-share-of-stock"[205] becomes patently burdensome in its operation, since it was found that petitioner HLI had control of the number of man-days to be given to the qualified FWBs, which in turn determined the number of shares they were to receive under the SDOA. In its Terminal Report, the DAR Special Team found that:

"FGD/OCI finding that the number of shares of stock to be received by the FWBs, depends on their designation (*i.e.*, permanent, casual or seasonal) and on the number of man days. Retired and retrenched workers are not given shares of stocks and cease as share holders. **Indisputedly (sic), the setup under the MOA is one-sided in favor of HLI. The work schedule, upon which the extent of entitlement to be granted shares of stock is wholly within the prerogative and discretion of HLI management that a FWB can still be denied thereof by the simple expediency of not giving him any working hours/days**. And this is made possible by the fact that [there] are more farmers/farmworkers in its employ than what is, according to HLI, necessary to make it operational."[206]

"2. The matter of issuance/distribution [of] shares of stocks in lieu of actual distribution of the agricultural land involved, was made **totally dependent on the discretion/caprice of HLI**. Under the setup, the agreement is **grossly onerous to the FWBs** as their man days of work cannot depart from whatever management of HLI unilaterally directs."[207]

"**They can be denied the opportunity to be granted a share of stock by just not allowing them to work altogether under the guise of rotation**. Meanwhile, within the 30-year period of bondage, they may already reach retirement, or, worse, get retrenched for any reason, then, they forever lose whatever benefit he (sic) could

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[205] Petitioner HLI's Memorandum, par. 5.2 (a), at 51; *rollo*, Vol. 3, at 3693.

[206] Terminal Report dated 22 September 2005, at 12; *rollo*, Vol. 1, at 397.

[207] Terminal Report dated 22 September 2005, at 18; *rollo*, Vol. 1, at 403.

have received as regular agrarian beneficiary under the CARP if only the SDP of HLI were not authorized and approved."[208] (Emphasis supplied)

Petitioner HLI retained control as to who would be granted the opportunity to become farmworkers in any given year and the number of man-days they would serve. It likewise had the discretion to determine who would be granted the annual benefit as well as the number of shares to be awarded. Qualified FWBs were thus, subject to the discretion or caprice of petitioner HLI, who could dilute or outrightly deny their entitlement to the shares of stocks.[209] It could play favorites and award man-days only to qualified FWBs who supported management while troublesome FWBs could be penalized by not allocating any man-days, thereby minimizing their entitlement to the shares.

Petitioner HLI's intent to reward the services of the farmworkers through the distribution of shares, which is also an incentive system to increase production is understandable. However, this scheme is more appropriate in the distribution of variable additional shares — not for the fixed minimum ratio necessary under a stock distribution option. Distribution of shares of stock based on the man-days rendered by the farmworker is more akin to **additional compensation** to an employee for services rendered. However, the CARL speaks of stock distribution as an alternative method to substitute direct land distribution and not as an added benefit to its employees.

The determination of qualified FWBs' shares based on the rolling criterion of man-days resulted in an expanded list of

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[208] *Id.*

[209] "The original farmers, under the man-days scheme of stock distribution can still be denied entitlement to a share of stock by just not allowing him to work. In effect, the matter of distribution of shares of stock was made totally dependent on the discretion of HLI management, for, by the simple expediency of denying employment, one will never qualify to receive a share irrespective of whether or not he is an original, regular and/or permanent worker." (PARC Council Resolution No. 2006-34-01 dated 03 May 2006, at 16-17; *rollo,* Vol. 1, at 422-423)

beneficiaries. Had the 6,296 qualified FWBs opted for direct land transfer, they would not have worried about sharing their titles to the land with other farm workers who came to work in Hacienda Luisita after the SDOA. Under the land transfer option, the finite parcel of land is directly awarded to identified FWBs with titles and documents to evidence their individual ownership to the exclusion of others. In contrast, the SDOA allowed the number of beneficiaries to balloon to 10,502 stockholder-beneficiaries (and growing) for as long as they performed work in the farm. Regardless of whether they were original residents in the area or migrants from nearby provinces, subsequent farm workers could be included and thus, expand the number of recipients. This in turn diluted the rights and benefits the original FWBs should have enjoyed under the SDOA *vis-à-vis* the newer stockholders. On this ground alone, there is sufficient basis to recall and/or revoke the SDOA since it is contrary to the intent of a stock distribution to existing and qualified FWBs.

Prolonged Period of Distribution

The CARL provides in Section 31:

> "If within two (2) years from the approval of this Act, **the land or stock transfer envisioned above is not made or realized** or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act." (Emphasis supplied)

The two year period from the approval of the CARL contemplates three situational deadlines with respect to the agricultural landholdings of a corporate landowner: (1) the realization of a land transfer to qualified FWBs; (2) the realization of the stock transfer to qualified FWBs; and (3) the approval of the PARC of the stock distribution. The instant situation falls under number (3) above, but the question that was not clearly answered by the law is how many years after the PARC's approval of the stock distribution should it take before the stock transfer is actually completed. Whatever the timeframe may be, the thirty year period for the distribution of stocks is patently

unreasonable and is not within the intent of a stock distribution option provided for by the CARL.

The piecemeal distribution of the shares over thirty years is an oppressive form of diminishing the value of the shares and is prejudicial to the interests of the FWBs. Apportioning the number of shares to the FWBs over a prolonged period reduces their capacity to enjoy their rights completely and immediately. For example, if petitioner HLI had declared cash dividends of ₱1.00 per share in the fifteenth year of distribution, then qualified FWBs would enjoy only half of the dividends owed them since they had yet to receive the other half of the shares allotted to them (assuming, of course, that they were to receive the same number of shares each year).[210] Rather than enjoy the full benefit of the shares of stock due and owed them, the FWBs are made to wait for three decades before they can appreciate the full benefits as a stockholder-beneficiary of petitioner HLI.

The inequity of the thirty-year period is highlighted when it is compared to the situation of an immediate land transfer. In a land transfer, a FWB can immediately feel the full benefit of land redistribution under the CARL upon the award of an emancipation patent or certificate of land ownership award and his actual physical possession of the land.[211] In sharp contrast

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[210] Petitioner HLI's proposal for the stock distribution even clarifies that the qualified FWBs will be entitled only to receive dividends whether cash or in stock, on the shares already distributed to them. This necessarily excludes their receipt of the announced dividends on the other shares to which they are entitled to but have yet to receive within the thirty year period. (*Rollo*, Vol. 3, at 3144)

[211] "The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land. Such award shall be completed in not more than one hundred eighty (180) days from the date of registration of the title in the name of the Republic of the Philippines: Provided, That the emancipation patents, the certificates of land ownership award, and other titles issued under any agrarian reform program shall be indefeasible and imprescriptible after one (1) year from its registration with the Office of the Registry of Deeds, subject to the conditions, limitations and qualifications of this Act, the property registration decree, and

to the SDOA, the qualified FWBs were deprived of full ownership of the entire shareholdings due them under the staggered stock distribution scheme. Qualified FWBs, regardless of their age or health conditions, had to continue working for petitioner HLI for a period of thirty years if they wanted to realize the complete benefits of the SDOA. The protracted award of stocks nurtured a culture of forced dependency upon petitioner HLI on the part of the qualified FWBs.

No other conclusion can be drawn from the two year period provided for in the land and stock transfer under the CARL except that full transfer of benefits to the landless farmers under the land reform program should be immediate. The shortened period for distribution should likewise apply in cases of the PARC approval of the stock distribution scheme. It would, thus, be reasonable to expect that all the shares of petitioner HLI allocated to the qualified FWBs would have been completely and absolutely distributed to them **within two years** from the PARC's approval of the SDOA, or no later than 14 November 1991. In fact, the DAR was more exacting when it required the approved stock distribution plan be implemented **within three months** from receipt of the PARC approval.[212] It was wrong

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other pertinent laws. The emancipation patents or the certificates of land ownership award being titles brought under the operation of the torrens system, are conferred with the same indefeasibility and security afforded to all titles under the said system, as provided for by Presidential Decree No. 1529, as amended by Republic Act No. 6732."

"It is the ministerial duty of the Registry of Deeds to register the title of the land in the name of the Republic of the Philippines, after the Land Bank of the Philippines (LBP) has certified that the necessary deposit in the name of the landowner constituting full payment in cash or in bond with due notice to the landowner and the registration of the certificate of land ownership award issued to the beneficiaries, and to cancel previous titles pertaining thereto." (CARL, Sec. 24)

[212] "The approved stock distribution plan shall be implemented within three (3) months from receipt by the corporate landowner-applicant of the approval thereof by the PARC and the transfer of the shares of stocks in the names of qualified beneficiaries shall be recorded in the stock and transfer books and submitted to the Securities and Exchange Commission (SEC) within sixty (60) days from the said implementation of the stock distribution plan. . . ." (DAR Administrative Order No. 10-88, Sec. 11)

for the DAR Special Team to allow implementation within **ten years**.[213] The two-year period is reasonably sufficient to realize the full transfer of shares and for qualified FWBs to understand and familiarize themselves with their rights and privileges as corporate stockholders.

Although operational and practical considerations may possibly permit some impediment to the automatic and complete transfer of shares, the gradual build-up[214] of shares of stock for a period of thirty years is simply wrong and defeats the objective of actual redistribution of land ownership to the farmers. **The CARL never envisioned the unreasonable delay in qualified FWBs' enjoyment of the benefits, which would have prolonged their suffering as landless farmers, especially when compared to the promptness of a land transfer option**. That petitioner HLI suddenly accelerated the distribution of the shares on 22 April 2005, more than fifteen years after the SDOA was signed,[215]

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[213] "2. While the SDO/SDP is an alternative arrangement to the physical distribution of lands pursuant to Section 31 of R.A. 6657, **logic and reason dictate that such agreement must materialize within a specific period during the lifetime of the CARP**, stating clearly therein when such arrangement must end. The aforementioned provision (CARL, Sec. 5) may be considered as the provision of the law on 'suspended coverage,' parallel to the provisions on Section 11 on Commercial Farming where coverage of CARP is deferred for ten (10) years after the effectivity of Republic Act No. 6657. Stated simply, owners of commercial farms are given a chance to recoup their investment for ten (10) years before same is finally subjected to coverage under the CARP." (Terminal Report dated 22 September 2005, at 14; *rollo*, Vol. 1, at 399)

[214] "On the matter of the need to protect the worker-beneficiaries' participation in the capital stock of the Company from dilution, we hereby guarantee that, happen what may during the time span of 30 years, the Company will have distributed to the worker-beneficiaries 33.296% of its outstanding capital stock at the end of the said period and that **while the interest of the worker-beneficiaries in the Company gradually builds up through the years until it reaches 33.296%,** their representation in the Board of Directors of the Company every year or at any given time will always be at the level of 33.296% or one-third (1/3) of the total number of seats in the said Board." (Letter dated 14 November 1989; *rollo*, Vol. 1, at 1311; emphasis supplied).

[215] On 22 April 2005, petitioner HLI completed the distribution of 3,433,167 shares of stock corresponding to Crop Year 2003-2004 to all its existing

only shows that no operational difficulty could have prevented the prompt receipt by the qualified FWBs of their shares. That the accelerated distribution was approved by petitioner HLI fortuitously almost a year **after** private respondents filed their protests with the PARC[216] raises the suspicion that its benevolence was targeted precisely to mitigate opposition to the SDOA,[217] foreclosing rejection of the agreement due to the completion of the distribution of the shares. [218]

There is no justification, contrary to what petitioner HLI proposes, to compare the thirty-year period for distributing the stocks to the thirty annual amortizations, to be paid to the Landbank of the Philippines (LBP) the land transfer, required of the FWBs.[219] The thirty annual amortization payments to be

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stockholders of record as of June 2004. (Petitioner HLI Letter dated 09 June 2005 [*rollo,* Vol. 1, at 193])

[216] Private respondents Supervisory Group and AMBALA filed their protests with the PARC on 14 October 2003 and 04 December 2003, respectively.

[217] "It is our position that since Hacienda Luisita, Inc., owner of the agricultural portions of the property known as Hacienda Luisita, has accelerated after 15 years the distribution to its farmworker-beneficiaries of the entire 118,396,000 shares of stock that were originally scheduled to allocated over a period of 30 years under its Stock Distribution Option (SD), such act has completed the implementation of the said Stock Distribution option (SDO) as a vehicle of land reform and has, as a consequence, taken out of the ambit of agrarian reform Hacienda Luisita, Inc., to which the agricultural land belongs." (Comments dated 18 November 2005, at 7; *rollo*, Vol. 1, at 709)

[218] "Secondly, the allegation that all of the shares of stock have already been distributed to the farmers, by way of acceleration, was only triggered by the filing of protests/complaints by the disillusioned farmers against the SDP of TDC/HLI." (PARC Council Resolution No. 2006-34-01 dated 03 May 2006, at 8; *rollo*, Vol. 1, at 414)

[219] "Lands awarded pursuant to this Act shall be paid for by the beneficiaries to the LBP in **thirty (30) annual amortizations at six percent (6%) interest per annum**. The annual amortization shall start one (1) year from the date of the certificate of land ownership award registration. However, if the occupancy took place after the certificate of land ownership award registration, the amortization shall start one (1) year from actual occupancy. The payments for the first three (3) years after the award shall be at reduced amounts as established by the PARC: Provided, That the first five (5) annual payments

made by the qualified FWBs are **beneficial** to the farmers, insofar as the LBP allows a prolonged period of time for them to pay for the lands transferred to them under preferable rates. In the case of amortization payments, the longer the period of payment, the better for the farmer since the obligation to pay is broken down to manageable installments. It also allows the farmers the full and complete use of the land, in order to immediately earn income, from which to source his amortization payments to LBP.[220] In sharp contrast, the thirty-year period of distributing shares under the SDOA is **detrimental** to the qualified FWBs; they are unable to enjoy their entitlement under a stock distribution scheme, since they have to wait several years before full transfer of all the shares due and owing to them.[221] Agrarian reform and land distribution was made to benefit the farmer by allowing immediate use of the redistributed land or rights thereunder while stretching the financial obligations or commitments out over manageable periods of time. The SDOA achieves the complete opposite by delaying the FWBs' acquisition of full rights as stockholders, and thus, must be struck down.

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may not be more than five percent (5%) of the value of the annual gross production as established by the DAR. Should the scheduled annual payments after the fifth (5th) year exceed ten percent (10%) of the annual gross production and the failure to produce accordingly is not due to the beneficiary's fault, the LBP shall reduce the interest rate and/or reduce the principal obligation to make the repayment affordable. . . ." (CARL, Sec. 26)

[220] "The rights and responsibilities of the beneficiaries shall commence from their receipt of a duly registered emancipation patent or certificate of land ownership award and their actual physical possession of the awarded land." (CARL, Sec. 24)

[221] "JUSTICE BRION: I see your point. My question is about the thirty (30) years. Where did these thirty years (30) years come from? Then I would like to suggest to you, counsel that you look at the land distribution scheme where there is the thirty (30) year period, under the land distribution scheme the transfer of the land would be immediate but the payment should be over a period of thirty (30) years. And now, what we are seeing here is a transfer of shares of stock contemplated to be for a period of thirty (30) years, but the transfer is not immediate, but supposedly there is no payment. So, it seems to me that ….

SOL. GEN. CADIZ: It is the reverse, Your Honor. In fact, thirty (30) years to pay; now it is thirty (30) years to acquire." (TSN dated 24 August 2010, at 46)

Valuation of the Land

The identification and valuation of the corporate assets of petitioner HLI, as a spin-off corporation, was not subjected to verification and audit examination by the DAR and resulted in the undervaluation of the shares due to the qualified FWBs.

The value ascribed to the assets of the corporate landowner, especially the agricultural lands, is crucial as it determines the number of shares to be distributed to the qualified FWBs. Under a stock distribution option, the qualified FWBs are entitled to a proportion of the shares in accordance with the value of the agricultural lands actually devoted to agricultural activities in relation to the company's total assets.[222] The determination of the number of shares each qualified FWB should receive can be reduced to this mathematical formula:

$$\frac{\text{Value of Agricultural Lands}}{\text{Value of the Company's Total Assets}} \times \frac{\text{No. of Total Outstanding Shares of Stock}}{\text{No. of qualified FWBs}} = \text{No. of shares of stock for every qualified FWB.}$$

If the valuation given to the agricultural land is decreased the number of shares of each qualified FWB decreases. Moreover, the number of shares for each qualified FWB will decrease if the value of the company's total assets increases without a corresponding increase in the value of its agricultural lands. Given the significance of the valuation to the dynamics of stock distribution, the DAR required that the valuation of the corporate assets under the stock distribution plan be subject to verification and audit examination by the DAR and based on the DAR's own valuation guidelines.[223]

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[222] CARL, Sec. 31.

[223] "The valuation of corporate assets submitted by the corporate landowner-applicant in this proposal shall be subject to the verification and audit examination by DAR. The determination of the value of the agricultural land shall be based on the land valuation guidelines promulgated by the DAR." (DAR Administrative Order No. 10-88, Sec. 6)

In this case, the values of the agricultural land or petitioner HLI's assets were never subjected to DAR verification or audit examination. When TADECO transferred the agricultural land together with other assets and liabilities, there was only the "imprimatur of the Securities and Exchange Commission by reason of its approval of the increase in the authorized capital stock" of petitioner HLI.[224] Petitioner HLI did not demonstrate that the values ascribed therein, especially to the agricultural land, were verified and audited by the DAR based on its own guidelines.

The absence of the DAR verification and audit of the values of the agricultural lands and petitioner HLI's total assets creates suspicion on the correctness of the number of shares distributed under the SDOA. Aside from the agricultural land, petitioner HLI included other non-land assets, such as machineries, land improvements and long term receivables, to increase the value of the total assets. However, inclusion of these other non-land assets served to diminish the ratio of the agricultural land to the total assets, and consequently decreased the proportional share to which the qualified FWBs were entitled to.

The assets and liabilities transferred by TADECO to petitioner HLI are broken down as follows:[225]

ASSETS TRANSFERRED			CAPITAL STOCK AND LIABILITIES		
	Value in ₱	%	Description	Value in ₱	%
1. Agricultural Lands (169 parcels of 4,915.7466	196,360,000	**33.27%**	*CAPITAL STOCK:* (**355,131,462**	355,131,462	60.14%

[224] "The above valuations of both assets and liabilities have been given the imprimatur of the Securities and Exchange Commission by reason of its approval of the increase in the authorized capital stock of Hacienda Luisita, Inc., the subscription to such increase of Tarlac Development Corporation, and the payment by Tarlac Development Corporation of its subscription thru transfer of assets and liabilities." (Proposal for Stock Distribution Option under the CARP at 9; *rollo*, Vol. 3, at 3739)

[225] Proposal for Stock Distribution Option under the CARP at 6-9; *rollo*, Vol. 3, at 3736-739.

has., at ₱40,000 per hectare)			**shares** to petitioner HLI)		
2. Machinery and Equipment (Heavy equipment, farm tractors and farm implements)	43,932,600	7.44%	*LIABILITIES:* A. Notes Payable	62,334,106	10.56%
3. Current Assets (cash accounts receivables, inventories, growing crops and prepaid insurance)	162,638,993	27.55%	B. Accrued Expenses	11,854,547	2.01%
4. Land Improvements (roads, culverts, bridges, irrigation canals, equipment and appurtenant structures)	31,886,300	5.40%	C. Accounts Payable	86,873,899	14.71%
5. Unappraised Assets (railroad system and equipment, furniture and fixtures, communication and utility, other equipment, and construction in progress)	8,805,910	1.49%	D. Current Portion of LTD	9,560,000	1.62%
6. Long Term Notes Receivables	28,063,417	4.75%	E. Income Tax Payable	24,126,946	4.09%
7. Residential Land (11 lots of 120.9234 has.,	60,462,000	10.24%	F. Due to Affiliated Companies	4,533,260	0.77%

at ₱500,000 per hectare)					
8. Lands used for roads, railways, canals, lagoons, parks, eroded portion, cemetery and water reservoir (187 lots consisting of 265.7495 has.)	58,135,000	9.85%	G. Long Term Debt	36,140,000	6.12%
TOTAL Assets	590,284,220	100%	TOTAL Capital Stock and Liabilities	590,284,220	100%

Based on the values of the assets and liabilities transferred, petitioner HLI's agricultural land of 4,915.7466 hectares was only 33.3% of its total assets, which means that the qualified FWBs were entitled to the same proportion with respect to the total capital stocks, or to 118,391,976.85 shares only.[226]

However, as pointed out by private respondent FARM, there were other lots in Hacienda Luisita that were not included in the stock distribution scheme, but should have been covered under the CARP.[227] TADECO, as the previous agricultural

[226] ₱196,360,000 (value of agricultural land) ÷ ₱590,554,220 (total value of company's assets) × 355,131,462 shares (capital stock) = **118,391,976.85 shares**.

[227] Table of Excluded Lands (Private Respondent FARM's Memorandum dated 24 September 2010, at 55-56; *rollo*, Vol. 3, at 3859-3860)

Description	Land Area (in Hectares)	
Total Land Area		6,443
Less:		
1. Sugar Mill Land	66	
2. Lands "Unfit for agriculture"	263	
3. Roads and Creeks	266	
4. Agro-Forest Land	159	
5. Residential Lots for Beneficiaries	121	
6. Reserve for Additional Homelots	652	
Total Exclusions		1,527
EQUALS: Land subject of SDOA		4,916

landowner, preempted the determination of the lands to be covered under the CARP by selecting which of the agricultural lands it would transfer to petitioner HLI and consequently, subject to the SDOA. The DAR never approved the exclusion of the other lands that TADECO kept for itself. It seems incongruous to the intention of the CARP under a stock distribution agreement, to let the corporate landowner choose and select which of its agricultural lands would be included and which ones it would retain for itself. Serious doubts are entertained with respect to the process of inclusion and exclusion of agricultural lands for CARP coverage employed by the corporate landowner, especially since the excluded land area (1,527 hectares) involves one-third the size of the land TADECO surrendered for the SDOA (4,916 hectares). The exclusion of a substantial amount of land from the SDOA is highly suspicious and deserves a review by the DAR. Whether these lands were properly excluded should have been subject to the DAR's determination and validation. Thus, the DAR is tasked to determine the breadth and scope of the portion of the agricultural landholdings of TADECO and petitioner HLI that should have been the subject of CARP coverage at the time of the execution of the SDOA on 11 May 1989.

Private respondent also alleged that there was an undervaluation of the agricultural land and cited sources that would identify different valuations of the lands ranging from ₱55,000 per hectare to ₱500,000 per hectare. Assuming that these cited values were accurate, the claimed valuation of the agricultural land at ₱40,000 per hectare is very low and grossly disproportionate to the total assets.[228] Although no conclusive findings on the correctness of

[228] "According to HLI, the farmer's 4,916 hectares were valued at ₱196.6 million, which amounts to ₱4 per square meter, or ₱40,000 per hectare. The 121 hectares contributed for homelots by TADECO, was valued at ₱60.5 million, or ₱500,000 per hectare. According to Putzel, all the lands were valued at ₱55,000/hectare in the books of TADECO in 1988 and that the land for the homelots and land improvements were valued at ₱6.7 million and ₱5.6 million respectively. (The SEC says that the records of TADECO's books are no longer available.)" (Respondent FARM's Memorandum at 57; *rollo*, Vol. 3, at 3861)

the valuations alleged is made for the mean time, as this is properly a function of the DAR, the exclusion of the DAR from the process of valuation of the agricultural lands to determine the qualified FWBs' proportional share in petitioner HLI is unacceptable. In fact, the Special Team noted that even the FWBs did not participate in the valuation of the agricultural lands.[229]

It is doubtful that the qualified FWBs had sufficient appreciation of the significance of the pooling of the agricultural lands and non-land assets transferred to petitioner HLI. Even assuming that the DAR approves the value of the agricultural land assigned by petitioner HLI and TADECO under the SDOA arrangement, the reality is that other non-land assets were included in the mix of corporate assets given by TADECO to petitioner HLI. Whether intentional or accidental, these additional non-land assets, which were almost twice the value of the agricultural lands affected, in all likelihood watered down the proportional share of the qualified FWBs under the SDOA. Qualified FWBs were thus relegated to being minority stockholders in petitioner HLI, without any real corporate strength to take effective control of the management of the corporation. In effect, TADECO obligingly transferred the agricultural land in paper to the qualified FWBs through the proportional delivery of shares of stock, but succeeded in retaining dominion over the real property by holding an almost two-thirds majority over petitioner HLI. The SDOA's arrangement of relegating the qualified FWBs to the status of minority stockholders is simply irreconcilable with the objective of empowering the qualified FWBs as stockholders in lieu of direct land distribution, as Justice Presbitero Velasco, Jr., illustrated during the oral arguments:

JUSTICE VELASCO:

I tend to agree with the statement made by Justice Perez that it is possible that it is the application of Section 31 that is erroneous

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[229] "Incidentally, the FWBs did not have participation in the valuation of the agricultural land for the purpose of determining its proportionate equity in relation to the total assets of the corporation. Apparently, the sugarland are undervalued." (Terminal Report dated 22 September 2005, at 18; *rollo*, Vol. 1, 403)

and that it should have been the DAR and PARC that should have applied it correctly. **What I am trying to point out is the fact that in this [S]DOA of HLI, the farmer beneficiaries were made only minority stockholders but in order to achieve the policy behind the CARL to distribute income and wealth to the landless farmers then it must be a condition for the approval of the SDOA that the farmer beneficiaries should be the majority stockholders, or more importantly, that they should be the only stockholders of the corporation**. Meaning, to say they have full control over the use of the landholdings of the corporation. In such a situation it is as if the landholdings are being owned and managed by a cooperative of farmer beneficiaries or a farmer organization owns it and in such a situation the policies, goals behind the CARL can still be achieved, do you agree with that?[230] (Emphasis supplied)

To illustrate, corporate control of petitioner HLI would have been different if only the agricultural lands were transferred by TADECO. In that case, since the agricultural lands composed the only assets of the new corporate entity (petitioner HLI) without any liabilities, then the entirety of the shares of stocks would belong to the qualified FWBs.[231] Thus, the landless farmer beneficiaries would have full, absolute and collective control and management of the corporation, and thus exercise effective "owner-like" rights over the agricultural lands, similar to a land transfer option but under a different scheme. Taking the illustration a step further, a partnership of equality between the qualified FWBs and the corporate landowners could have at least been

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[230] TSN dated 24 August 2010, at 230-231.

[231] "There are a variety of means by which both to meet the constitutional requirement that regular farmworkers receive direct or collective ownership of the land they till and permit the continued operation of such corporate farms as are proven to be efficient in their present scale of operation. For example, separate corporate entities could be established, **with one corporation having ownership of all land assets coupled with the distribution of all the stock of that corporation to the worker beneficiaries**. Assuming existing operations were maintained; existing management retained, or comparable management hired; and wage and benefits levels remained constant, farm profitability would not differ significantly from previously levels. **However, the land-related portion of this profits would now benefit the farmworkers**." (Riedinger, *supra* note 4, at 160; emphasis supplied)

achieved if the value of the other assets transferred were equal to or less than the value of the agricultural lands. In this scenario, the former corporate land owner and the qualified FWBs would have equal say on how petitioner HLI's business would be managed, such as with regard to purchasing properties and machineries for its business, introducing improvements on the lands, entering into loan agreements, mortgaging their lands as security, or even applying for conversion of idle lands.

In this case, however, TADECO was solely responsible for choosing which assets and liabilities it would transfer to petitioner HLI. Thus, it effectively designated how many shares qualified FWBs would receive *vis-à-vis* the ratio of the agricultural lands to the value of the total assets transferred. This arrangement created opportunities for TADECO to dilute the qualified FWBs' shareholdings by either "undervaluing the land assets or overvaluing the non-land assets."[232] It bears stressing that the incorporation of petitioner HLI and the subsequent transfer of the agricultural lands and other assets were undertaken by TADECO even before the qualified FWBs had agreed to the SDOA.[233] Furthermore, the SDOA was signed before the DAR had conducted a massive information campaign and conducted a referendum among the qualified FWBs.[234] Not only was there an issue as to the propriety of the valuations ascribed to the conveyed assets, serious doubts are entertained as to whether the qualified FWBs completely understood the effect of increasing the asset pool to their shareholdings, much less that they were

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[232] "The provision created obvious incentives to dilute the value of the workers' shares by either undervaluing the land assets or overvaluing the non-land assets." (Riedinger, *supra* note 4, at 159)

[233] Petitioner HLI was registered in the SEC only on 23 August 1988 and received the assigned agricultural lands and other assets from TADECO on 22 March 1989. However, the SDOA was signed by TADECO, petitioner HLI and the FWBs only on 11 May 1989.

[234] It was only after the SDOA was signed on 11 May 1989, that the DAR issued a massive information campaign on 14 October 1989 and conducted a referendum. (Petitioner HLI's Memorandum dated 23 September 2010, at 11; *rollo*, Vol. 3, at 3645)

agreeing to a diminished or minority role in the running of petitioner HLI under the SDOA.[235]

Even the combined and unified 33.296% vote of all qualified FWBs would not significantly sway major corporate decisions of petitioner HLI. Regardless of how the minority directors of the qualified FWBs were to vote, the majority would be able to railroad any corporate act it deems fit. The authority the qualified FWBs would have over the corporate affairs of petitioner HLI[236] would be a mere token representation, lacking effective control in determining the direction of the corporate entity having ownership and possession of the agricultural land. The inequity is made more apparent if it is remembered that the main asset of the corporation — the agricultural land — could have been entirely under the FWBs' names under a land distribution scheme.

Agrarian reform was instituted under the Constitution to liberate ordinary farmers from their dependency on the landowners, but not at the expense of exchanging their bondages for corporate serfdom[237] under a meaningless stock distribution scheme. In this case, although no express pronouncement as to the validity of a stock distribution scheme under the CARL is made, the stock distribution arrangement in Hacienda Luisita is fatally flawed on the basis of the three grounds discussed earlier and must be struck down.

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[235] "The problem was not really that the farmworkers on the *hacienda* were denied the freedom of expression or the right to choose, as one peasant organization charged. **It was rather that farmworkers, tenants and the landless rural poor continued to be denied an environment that would allow them to identify what their choices were**." (James Putzel, *A CAPTIVE LAND: THE POLITICS OF AGRARIAN REFORM IN THE PHILIPPINES* [Ateneo de Manila University Press 1992] at 335)

[236] The stock distribution arrangement "contemplates of allowing the farmer-beneficiaries from the very start to occupy such number of seats in the board of directors of the corporate landowner as the whole number of shares of stock set aside for distribution may entitle them, so that they could have a say in forging their destiny." (Proposal for Stock Distribution under C.A.R.P. [May 1989] at 17; *rollo*, Vol. 3, at 3747)

[237] Respondent FARM's Memorandum at 60; *rollo*, Vol. 3, at 3864.

No Violation of Due Process or the Non-Impairment Clause

Petitioner HLI's broad invocation of violation of its rights to due process and the non-impairment clause is without merit.[238]

First, petitioner HLI assails the failure on the part of public respondent PARC to afford it an opportunity to submit evidence to support its case. However, the records show that petitioner HLI was able to present its opposition to private respondents' petitions in the proceedings below. Public respondent PARC even issued an order requesting petitioner HLI to submit comments and/or oppositions to the petitions filed by private respondents Supervisory Group and AMBALA and also furnishing it copies of the said petitions.[239] In fact, the Technical Working Group even met with the legal counsel of petitioner HLI to discuss the extent of petitioner HLI's compliance with the SDOA and to clarify some of the SDOA's provisions.[240]

Petitioner HLI likewise assails the failure of the questioned PARC Resolution to state the facts and the law on which the ruling is based.[241] The questioned PARC Resolution adopted the recommendations of the PARC Executive Committee to revoke/recall the approval of the SDOA and to cause the agricultural lands in Hacienda Luisita to be subject to compulsory coverage. It is not *per se* wrong for an administrative agency, such as the PARC, to adopt wholesale the reports of its representatives or designated teams, which were specifically mandated to conduct an investigation of the matter, and which

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[238] Petitioner HLI's Memorandum at 47-48; *rollo*, Vol. 3, at 3689-3690.

[239] DAR Order dated 06 December 2004; *rollo*, Vol. 3, at 3750.

[240] "The Technical Working Group had a meeting with Atty. Jun dela Merced, HLI Legal Counsel, where the extent of HLI's compliance and some clarification on the MOA entered into by and between the corporation and the FWBs were discussed." (Terminal Report dated 22 September 2005, at 7; *rollo*, Vol. 1, at 392)

[241] "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." (CONSTITUTION, Art. VIII, Sec. 14)

possessed the competence to perform the task. In this case, the Terminal Report of the DAR Special Team outlined the allegations of the petitions and petitioner HLI's defenses, and clearly set forth its findings with respect to its recommendation to recall/ revoke the SDOA. Unless there is a blatant factual error or misapplication of the law or its rules, nothing prevents the administrative agency from affirming the delegated authority's recommendations *in toto*.

Although public respondent PARC failed to attach a copy of the Terminal Report and recommendation of the PARC Executive Committee, this lapse in procedure is not so grave as to warrant absolute nullification of the questioned PARC Resolution. In any case, petitioner HLI was subsequently furnished said documents, which were used as well in furthering the instant petition before the Court.

Second, petitioner HLI's insistence on the non-impairment clause is misplaced, as it deals with a fundamental right against the exercise of legislative power, and not of judicial or quasi-judicial power.

In *Lim v. Secretary of Agriculture*, the Court explained the scope of the non-impairment clause thus:

> For it is well-settled that a law within the meaning of this constitutional provision has reference primarily to statutes and ordinances of municipal corporations. Executive orders issued by the President whether derived from his constitutional power or valid statutes may likewise be considered as such. **It does not cover, therefore, the exercise of the quasi-judicial power of a department head even if affirmed by the President.** The administrative process in such a case partakes more of an adjudicatory character. It is bereft of any legislative significance. It falls outside the scope of the non-impairment clause.[242] (Emphasis supplied)

In the instant case, the recall/revocation of the SDOA is necessarily an exercise of the PARC's quasi-judicial power. Public respondent PARC was made to decide conflicting claims

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[242] 34 SCRA 751, 764 (1970).

based on petitioner HLI's purported violations of the provisions of the SDOA. There was an adjudication of the respective rights of the parties to the SDOA, as well as the validity of the SDOA. The questioned PARC resolution was not a legislative act or an administrative order that prescribed regulations applicable to all kinds of stock distribution options; it was a decision on the competing allegations of non-performance under the SDOA, which was sought to be enforced. No less than petitioner HLI's counsel concedes that the assailed acts of public respondent PARC were not legislative in nature for purposes of invoking the non-impairment clause under the Constitution.[243]

Petitioner HLI also argues that it has substantially complied with and performed the obligations under the SDOA for the past sixteen (16) years; thus, public respondent PARC is precluded from reviewing the agreement and ordering its nullification. As earlier discussed, the SDOA was subject to approval of compliance by public respondent PARC, in order to ensure that the obligations of the corporate landowner would not become hollow promises. What is contemplated in the CARL is conferment on the qualified FWBs of their full rights as stockholders, in the same manner as title and ownership of the land are absolutely transferred to the farmer-beneficiary in a land transfer scheme. In fact, no less than the Section 31 of the CARL allows for compulsory coverage of agricultural lands in the event that the stock transfer is not made or realized. Piecemeal and delayed distribution of shares should likewise result in the same penalty.

In arguing that it has substantially complied with the CARL, petitioner HLI would seek to capitalize on the benefits it extended to the qualified FWBs in terms of salaries, wages, fringe benefits, free hospital and medical services, vacation and sick leaves, amelioration bonus, school bus allowances for dependents, emergency relief allowances, maternity benefits, financial benefits

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[243] "JUSTICE MORALES: So, my question now is, again I sound like a broken record, are the assailed acts of PARC considered legislative for you to invoke the Constitutional non impairment clause?

ATTY. ASUNCION: My answer is no, your Honor please." (TSN, 18 August 2010, at 66)

due to old age/death and various loans. However, these benefits were derived from the employer-employee relationship between petitioner HLI and the farmworkers. Petitioner HLI gave farmworkers their salaries and extended other employment benefits for the man-days that the latter rendered in favor of the company, and not because they were qualified FWBs. The obligations of the corporate landowner to give salaries and benefits to farmworkers are founded on different legal bases as opposed to its obligation to provide the benefits of a genuine stock distribution option to qualified FWBs. Indeed, the CARL provides that nothing in the implementation of the stock distribution scheme shall justify the reduction or diminution of the benefits received or enjoyed by the worker/beneficiaries.[244]

Petitioner HLI's enumeration of the benefits is out of place in the present controversy surrounding the stock distribution option, since these were granted in exchange for the services rendered by the farmworkers to the former. Petitioner HLI cannot claim magnanimity in extending these benefits, when it received a fair day's labor from the farmworkers.

Neither can petitioner HLI have the petitions dismissed on the ground of the ten-year prescriptive period for actions for specific performance or cancellation of civil contracts.[245] Allowing the distribution of the shares to stretch for a period of thirty years before the SDOA can be deemed completely implemented tolls the prescriptive period for an action to cancel it. Hence, the mere lapse of 10 years should not preclude qualified FWBs from questioning the 30-year SDOA, especially if the violation was committed or discovered in the eleventh or subsequent years. It would be prejudicial to the interests of qualified FWBs to deny them a remedy for the continued non-performance of petitioner HLI's obligations, when these obligations have not yet been completely satisfied and remain to be continuing obligations for thirty years.

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[244] "In no case shall the compensation received by the workers at the time the shares of stocks are distributed be reduced." (CARL, Sec. 31)

[245] CIVIL CODE, Art. 1144.

THE WAY FORWARD

Reversion of Hacienda Luisita Lands to Compulsory Coverage

Since the SDOA was patently void and failed to properly distribute the shares of petitioner HLI to the 6,296 original qualified FWBs, the questioned PARC Resolutions revoking the SDOA and **ordering the compulsory coverage of the entire Hacienda Luisita agricultural lands under the CARL** should be affirmed.

The change of modality, from the alternative mode of stock distribution option to the general rule of direct land redistribution[246] under compulsory coverage, is explicitly sanctioned under Section 31 of the CARL.

Section 29 should also be recalled herein:

> In the case of farms owned or operated by corporations or other business associations, the following rules shall be observed by the PARC:
>
> **In general, lands shall be distributed directly to the individual worker-beneficiaries.**
>
> **In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association.** Until a new agreement is entered into by and between the workers' cooperative or association and the corporation or business association, any agreement existing at the time this Act takes effect between the former and the previous landowner shall be respected by both the workers' cooperative or association and the corporation or business association.

In exchange, petitioner HLI as the previous landowners is entitled to the payment of just compensation of the value of the land at the time of the taking. Since the award of direct land transfer is being settled by the Court only now, then the

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[246] "Only a programme that makes land redistribution central to the logic of reform can help to break both the economic and political ties of dependence and subordination between the rural poor and their patrons." (Putzel, *supra* note 235, at 33-34)

value of the property should be similarly pegged at this point. The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition; or the fair value of the property as between one who receives and one who desires to sell, if fixed **at the time of the actual taking by the government**.[247]

For purposes of just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of taking.[248] Therefore, the proper reckoning period to determine the value of the lands of petitioner HLI and/or TADECO is at the time of the taking, which approximates the fair market value of the properties as they stand now, and not as they were two decades ago. The fair market value takes into consideration the evolving nature of the land and its appreciated value, arising from the improvements introduced by petitioner HLI into the area, as well as the development in neighboring lands.

I differ from the position of Justice Brion that would reckon the taking from the time the SDOA was entered into, on 11 May 1989, and yet deprive petitioner HLI of interest payments in the interim. The proposal amounts to undue hardship on the part of petitioner HLI as the previous landowner. While it is the duty of the Court to protect the weak and the underprivileged, this duty should not be carried out to such an extent as to deny justice to the landowner.[249]

Pegging the value of the property to the time of the execution of the SDOA almost twenty years prior will undoubtedly affect

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[247] *LBP v. Rivera*, G.R. No. 182431, 17 November 2010, citing *Republic v. Court of Appeals*, 433 Phil. 106 (2002).

[248] *LBP v. Livioco,* G.R. No. 170685, 22 September 2010, citing *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, G.R. No. 149621, 05 May 2006, 489 SCRA 590, 613.

[249] *Landbank of the Philippines v. Heirs of Domingo*, G.R. No. 168533, 04 February 2008, 543 SCRA 627, citing *Landbank of the Philippines v. Court of Appeals*, 319 Phil. 246, 249 (1995).

the valuation of the property. The improvements there and the developments in neighboring areas contributed to the increase in the land's value, regardless of whether they were introduced by petitioner HLI or not. The appreciation of the value will not be accounted for if the price is to be pegged at 1989. The increases in value cannot be ignored or taken away from petitioner HLI, if compensation to it as a landowner is to be considered just. "The word 'just' is used to intensify the meaning of the word 'compensation' and to convey the idea that the equivalent to be rendered for the property to be taken shall be real, substantial, full, and ample."[250] Compensation cannot be real, substantial, full and ample if the price paid for the property expropriated under CARL is made to retroact the value of the land to more than two decades prior to the actual taking.

The payment of interest from the execution of the SDOA up to full satisfaction of just compensation may have presumably approximated the improvements and the appreciation in the land's value throughout the years. Certainly, the computation of the amount of interest from 1989 would entail additional inconvenience, if not another future source of conflict, to the parties and the DAR. There are differences in the values of some of the portions of the land, and our jurisprudence on entitlement to interest involving government payments here have been less than clear and definitive. Yet, the proposal forwarded by Justice Brion would value the land at its decreased level in 1989 and at the same time deny interest from 1989, on the ground that petitioner HLI never lost possession of the lands because of the SDOA. Hence, petitioner HLI would be made to suffer twice the loss of its lands — *first*, by paying its properties at the 1989 levels; and *second*, by ignoring improvements made on the lands, which have appreciated its value.

The more equitable and just option under our jurisprudence that accounts for petitioner HLI's twin losses of land and improvements is to allow payment of the fair market value of the property at the time of the taking. Regardless of whether

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[250] *NAPOCOR v. Diato-Bernal*, G.R. No. 180979, 15 December 2010, citing *Republic v. Libunao*, 594 SCRA 363, 376 (2009).

the Hacienda Luisita lands remain viable as agricultural land or gain more substantial economic value for non-agricultural purposes, petitioner HLI will be justly compensated for the properties. Meanwhile, the FWBs will gain more from the direct transfer of valuable lands, and their freedom, as owners, to determine for themselves the best use for the lands according to their present nature and character. Although compensation may cause certain financial hardship to the government, there are various modes of payment of just compensation under the CARL,[251] which it can explore in order to give what is due to petitioner HLI for the lands subject of direct land transfer. As proposed here, the amount of just compensation owed to petitioner HLI, may be offset by its liabilities to the government and the qualified FWBs.

I cannot subscribe either to the imposition of liability upon petitioner HLI for the payment of rentals from 1989 as a form of damages in favor of the qualified FWBs. The rental payments would connote that petitioner HLI used the land, now belonging to qualified FWBs, to the exclusion of the owners. However, the land did not yet belong to the qualified FWBs at the time the property was being used by petitioner HLI; thus, they cannot demand payment for the use of the land that they did not yet own at that time. It would be iniquitous to extract from petitioner HLI reasonable compensation for the use of the Hacienda Luisita lands from the execution of the SDOA, when the properties were properly under its name and without any cloud of doubt as to its title thereto.

The Operative Facts Doctrine Inapplicable.

Our system of laws will be turned on its head by the application of the "doctrine of operative facts" in this case. It must be remembered that this doctrine is the exception; as an exception, it can only be applied sparingly under the right set of circumstances.

A very clear explanation of the doctrine is provided by former Chief Justice Fernando in his *ponencia* in *De Agbayani v.*

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[251] CARL, Sec. 18.

Philippine National Bank[252] and his Concurring Opinion in *Fernandez v. P. Cuerva & Co.*[253] His analysis of the doctrine consists of a two-step process.

He first lays down the basic proposition:

> … The decision now on appeal reflects the orthodox view that **an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties**. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "**When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern**. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws of the Constitution. It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.[254]
>
> The orthodox views finds support in the well-settled doctrine that the Constitution is supreme and provides the measure for the validity of legislative or executive acts. Clearly then, **neither the legislative nor the executive branch, and for that matter, much less, this Court, has power under the Constitution to act contrary to its term**. Any attempted exercise of power in violation of its provisions if to that extent unwarranted and null.[255]

Then he recognizes that some effects of the invalid act may be recognized as an exception to its consequent nullity but always in the context of the particulars of a case and not as a matter of general application:

> This doctrine admits of qualifications, however. As the American Supreme Court stated: "The actual existence of a statute prior to such a determination [of constitutionality], is an operative fact and

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[252] G.R. No. L-23127, 29 April 1971, 38 SCRA 429.

[253] G.R. No. L-21114, 28 November 1967.

[254] *De Agbayani v. Philippine National Bank, supra*.

[255] Concurring Opinion, *Fernandez v. P. Cuerva & Co., supra*.

may have consequences which cannot always be erased by a new judicial declaration. **The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular regulations, individual and corporate, and particular conduct, private and official**.[256]

Such exceptions have, for a very long time, recognized only instances when inequity would result from completely disregarding the good faith compliance with **statutes** before they were pronounced unconstitutional.

Manila Motor Co., Inc., v. Flores[257] and *De Agbayani v. Philippine National Bank*,[258] cited by the *ponencia*, and *Republic v. Herida*,[259] and *Republic v. CFI*,[260] cited by Justice Brion, all involve the application of the debt moratorium laws. In those cases, the Court held that during the period from the effectivity of the debt moratorium laws until they were struck down as unconstitutional in *Rutter v. Esteban*,[261] the parties could not be faulted for relying on the belief that the payment of debts was suspended by virtue of the debt moratorium laws. In *Fernandez v. P. Cuerva & Co.*,[262] another case relied on by the *ponencia*, another statute — the Reorganization Law – was the invalid act declared by the Court. In *Rieta v. People*,[263] also relied on by the *ponencia*, again another statute — General Order No. 60 issued by former President Ferdinand Marcos under his martial law legislative power — was invalidated.

While the *ponencia* claims that the application of the doctrine of operative facts to executive issuances is well-settled in our

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[256] *Id.*, citing *Chicot Country Drainage Dist. vs. Baxter States Bank*, 308 US 371 (1940).

[257] G.R. No. L-9396, 16 August 1956, 99 Phil. 738.

[258] G.R. No. L-23127, 29 April 1971, 38 SCRA 429.

[259] G.R. No. L-34486, 27 December 1982, 119 SCRA 411.

[260] G.R. No. L-29725, 27 January 1983, 120 SCRA 154.

[261] G.R. No. L-3708, 18 May 1953, 93 Phil. 68 (1953).

[262] G.R. No. L-21114, 28 November 1967.

[263] G.R. No. 147817, 12 August 2004, 436 SCRA 273.

jurisprudence, the *ponente* relies on **only two cases** to support this claim — *City Government of Makati v. Civil Service Commission*,[264] and *Chavez v. National Housing Authority, R-II Builders, Inc., et al.*[265] In both instances, **clear considerations of equity were present.**

In *City Government of Makati*, a city employee was arrested without warrant and incarcerated for three years, until acquitted of the crime charged. Meantime, she was suspended on account of the arrest. Because she could not report for work, as she was in jail, she was dropped from the rolls for being absent without leave for more than a year. After her acquittal, she requested her reinstatement, but this request was repeatedly denied due to the lack of an approved leave. Her case was brought to the Civil Service Commission and the Court of Appeals, and both sustained her right to be reinstated. The Court deemed that the city government's order of suspension was equivalent to an approved leave of absence, inasmuch as it was the city itself that "placed her under suspension and thus excused her from further formalities in applying for sick leave. Moreover, the arrangement bound the city government to allow private respondent to return to her work after the termination of her case."[266]

The City of Makati raised as an alternative defense the theory that the order of suspension could not have created the above effect, as it was void considering there was no pending administrative charge against her; thus, the employee was still required to file a leave application. The Court held that it could not go to the extent of declaring the suspension order void, as competence was presumed to reside in the City's personnel officer who issued the suspension order. Further, even if it were void, "(i)t would indeed be ghastly unfair to prevent private

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[264] G.R. No. 131392, 06 February 2002, 376 SCRA 248.

[265] G.R. No. 164527, 15 August 2007, 530 SCRA 235.

[266] "This pledge sufficiently served as legitimate reason for her to altogether dispense with the formal application for leave; there was no reason to, as in fact it was not required, since she was for all practical purposes incapacitated or disabled to do so." (*City Government of Makati v. Civil Service Commission, supra*.)

respondent from relying upon the order of suspension in lieu of a formal leave application."[267]

The application of the doctrine of operative facts in *Chavez v. NHA and R-II Builders Inc.*, as in *City of Makati* was not made in a vacuum. It was applied considering the following:

> The SMDRP agreements have produced vested rights in favor of the slum dwellers, the buyers of reclaimed land who were issued titles over said land, and the agencies and investors who made investments in the project or who bought SMPPCs. These properties and rights cannot be disturbed or questioned after the passage of around ten (10) years from the start of the SMDRP implementation. Evidently, the "operative fact" principle has set in. The titles to the lands in the hands of the buyers can no longer be invalidated.

No similar demands of equity apply in this case. In fact, equity cannot apply in the clear presence of law. Section 31 of the CARL clearly mandates this Court to order land distribution. To recall:

> If within two (2) years from the approval of this Act, the land or stock transfer envisioned above is not made or realized or the plan for such stock distribution approved by the PARC within the same period, the agricultural land of the corporate owners or corporation shall be subject to the compulsory coverage of this Act.

That the doctrine of operative facts must be applied strictly only to instances in which the law is silent, and the equity remedies of this Court are called for, is clear from two Decisions of this Court.

In *Republic v. CA & Henrico Uvero, et al.*,[268] the Court held:

> A judicial declaration of invalidity, it is also true, may not necessarily obliterate all the effects and consequences of a void act occurring prior to such a declaration. Thus, in our decisions on the moratorium laws, we have been constrained to recognize the interim effects of said laws prior to their declaration of unconstitutionality,

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[267] *City Government of Makati v. Civil Service Commission, id.*

[268] G.R. No. 79732, 08 November 1993, 227 SCRA 509.

but there we have likewise been unable to simply ignore strong considerations of equity and fair play. So also, even as a practical matter, a situation that may aptly be described as *fait accompli* may no longer be open for further inquiry, let alone to be unsettled by a subsequent declaration of nullity of a governing statute.

The instant controversy, however, is too far distant away from any of the above exceptional cases. To this day, the controversy between the petitioner and the private respondents on the issue of just compensation is still unresolved, partly attributable to the instant petition that has prevented the finality of the decision appealed from. The fact of the matter is that the expropriation cases, involved in this instance, were still pending appeal when the EPZA ruling was rendered and forthwith invoked by said parties.

In *Planters Products v. Fertiphil*,[269] the Court summed up its view on the application of the doctrine thus:

At any rate, We find the doctrine inapplicable. The general rule is that an unconstitutional law is void. It produces no rights, imposes no duties and affords no protection. It has no legal effect. It is, in legal contemplation, inoperative as if it has not been passed. Being void, Fertiphil is not required to pay the levy. All levies paid should be refunded in accordance with the general civil code principle against unjust enrichment. The general rule is supported by Article 7 of the Civil Code, which provides:

> Art. 7. Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse or custom or practice to the contrary. When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern.

The doctrine of operative fact, as an exception to the general rule, only applies as a matter of equity and fair play. It nullifies the effects of an unconstitutional law by recognizing that the existence of a statute prior to a determination of unconstitutionality is an operative fact and may have consequences which cannot always be ignored. The past cannot always be erased by a new judicial declaration.

The doctrine is applicable when a declaration of unconstitutionality will impose an undue burden on those who have relied on the invalid

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[269] G.R. No. 166006, 14 March 2008, 548 SCRA 485.

law. Thus, it was applied to a criminal case when a declaration of unconstitutionality would put the accused in double jeopardy or would put in limbo the acts done by a municipality in reliance upon a law creating it.

Here, We do not find anything iniquitous in ordering PPI to refund the amounts paid by Fertiphil under LOI No. 1465. It unduly benefited from the levy. It was proven during the trial that the levies paid were remitted and deposited to its bank account. Quite the reverse, it would be inequitable and unjust not to order a refund. To do so would unjustly enrich PPI at the expense of Fertiphil. Article 22 of the Civil Code explicitly provides that "every person who, through an act of performance by another comes into possession of something at the expense of the latter without just or legal ground shall return the same to him." We cannot allow PPI to profit from an unconstitutional law. Justice and equity dictate that PPI must refund the amounts paid by Fertiphil.

Republic v. CA & Uvero denied the application of the doctrine of operative facts. The government had wanted the Court to apply the doctrine to fix the value of the just compensation for the expropriated land of private respondents at the rate fixed by Presidential Decree No. 76, which was valid at the time of the expropriation, but invalidated by the time *Uvero* was decided. The Court held that since the just compensation had never been completely settled, the situation was far from calling for the application of the doctrine.

In *Planters Product*, the Court denied the application of the doctrine of operative facts, because there was nothing inequitable or iniquitous in ordering Planters Products, Inc., from returning to Fertiphil Corporation all the amounts the latter paid pursuant to a letter of instruction (LOI) President Marcos had issued to that effect. This LOI was found unconstitutional by the trial court, and this finding was affirmed by both the Court of Appeals and by the Supreme Court. In fact, this Court found that what would be inequitable and unjust is for Planters Products, Inc., to retain the amounts held.

While substantial justice is the underlying aim of agrarian reform, it is equally true that equity may only be applied where positive law is silent. That the operative facts doctrine is one

of equity has been discussed by the majority. In the same breath, the majority fails to delineate a clearly entrenched legal rule from an equitable rule, glossing over the fact that equity cannot take the place of positive law. Aptly described as "a justice outside legality," this doctrine is applied only in the absence of, and never against, statutory law. *Aequetas nunquam contravenit legis*.[270]

For all its conceded merit, equity is thus only available in the absence of law, and not as its replacement. Equity has no application, as to do so would be tantamount to overruling or supplanting the express provisions of law.[271]

The pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity.[272] To state otherwise would tolerate impunity in litigation.

In this case, Section 31 of the CARL is clear — the lands must be distributed if the stocks are not distributed. The validity of both the SDP and the SDOA is in question and unsettled. It would be unjust and inequitable to withhold from the qualified FWBs what is due them — their appropriate portions of the land. Petitioner HLI can have its shares back from the qualified FWBs and be paid just compensation. It would not suffer from any injustice by the application of the law.

On the other hand, if we call this a case in which equity is due petitioner HLI, then we encourage impunity. Impunity is when we reward the violation of the SDP by allowing its implementation to be marred by the illegalities that we have found here. In all the cases cited, the doctrine is never a reward for illicit acts as performed here. What this Court would signal is that it is rewarding a hollow promise of compliance with the law in order to obtain an administrative permit; then, after the

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[270] *Zabat v. Court of Appeals*, No. L-36958, 10 July 1986, 142 SCRA 58.

[271] *PTA v. St. Mattew Christian Academy*, G.R. No. 176518, 2 March 2010, 614 SCRA 41.

[272] *Causapin v. Court of Appeals*, G.R. No. 107432, 4 July 1997, 233 SCRA 615, 625.

permit has been obtained, break the law, since the lawbreakers can have this illicit act validated by the Court. This must absolutely not happen.

The doctrine of operative facts cannot apply either for two important reasons: (1) it will legitimize the injustice committed to the FWBs when their collective shares were arbitrarily reduced to only 33% of petitioner HLI through the undervaluation of the transferred assets; and (2) it will legitimize a second illegal reduction of the shares of the FWBs when more stockholders were added to their collective group. This Court cannot allow them to waive the rights that were granted to them under the social justice clause of the Constitution.

It strains reason how qualified FWBs can be allowed the "false choice"[273] of agreeing to a patently illegal SDO scheme, especially when their approval of the SDOA will not even improve their standing in the corporation, but only allowed to continue being minority stockholders. The vulnerability of qualified FWBs under the voting option is underscored by their current economic hardships and their desperate need for immediate financial assistance, as explained by counsel for FARM, Atty. Christian Monsod:

ATTY. MONSOD:

Both of them bad. Yes, Your Honor, because the farmers have other options than merely accepting one thousand three Hundred or one thousand four hundred square meters where they put in Seven Thousand Eight Hundred square meters into the enterprise. They can have the land, if they get the land there are many modalities, there are many ways by which they can be helped by government by which they can earn more from the land and if your read Your Honor all the answers of the farmers on why they got the money, there is not a single one I read, maybe you did, but I did not read a single answer of the farmers saying it was excellent, it was a good deal for us. **They say — we have no money, we have no food better there is cash now, you know, I need it, how long will I have to wait for the case, it has been four (4) years I cannot wait much**

[273] "ATTY. MONSOD: The compromise agreement presents the farmers with two (2) false choices." (TSN dated 24 August 2010, at 218)

longer at least there is something here that I am getting and maybe 20 Million, maybe another 30 Million to do it. I have not read any reply of the farmer that does not reflect the fact that he is in a desperate, no choice situation that means there is something wrong with it. Now, for example, Your Honor, there is a portion there that says — you will get that measly one thousand three hundred or one thousand four hundred square meters because of the thirty three (33%) thing. And said — if you want to sell, Hacienda Luisita has a right of first refusal, it is three hundred sixty (360) days right of first refusal. If a farmer needs money very badly there is a good offer from his land and he needs it, he goes to Hacienda Luisita and Hacienda Luisita will make him wait to three hundred sixty (360) days, don't you think he will accept a much lower price because precisely he is on the edge of survival. This is the kind of option that has been given to the farmer. DAR was not asked to participate in this process, when they are asked why the DAR was not participating they said DAR can say its opinion in the Supreme Court. But precisely DAR was needed in order to make sure that the consent of the famer was not vitiated that there was a reciprocity of values which there is none here.[274] (Emphasis supplied)

The compulsory coverage of the agricultural lands of petitioner HLI will not necessarily result in its automatic dissolution as a corporate entity. It must be remembered that the "sale" of the agricultural lands in this instance is not the ordinary business transfer of corporate assets as approved by petitioner HLI's stockholders in accordance with the Corporation Code;[275] the

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[274] TSN dated 24 August 2010, at 219-220.

[275] "Subject to the provisions of existing laws on illegal combinations and monopolies, a corporation may, by a majority vote of its board of directors or trustees, sell, lease, exchange, mortgage, pledge or otherwise dispose of all or substantially all of its property and assets, including its goodwill, upon such terms and conditions and for such consideration, which may be money, stocks, bonds or other instruments for the payment of money or other property or consideration, as its board of directors or trustees may deem expedient, when authorized by the vote of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, or in case of non-stock corporation, by the vote of at least to two-thirds (2/3) of the members, in a stockholder's or member's meeting duly called for the purpose. Written notice of the proposed action and of the time and place of the meeting shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and

transfer of the agricultural land to qualified FWBs is in the exercise of the state's expropriation powers to take property for a legal objective (agrarian land reform) upon due payment of just compensation. Neither can the taking of the agricultural lands of petitioner HLI (which are only 33.296% of its total assets) be considered as substantially all of its assets under the Corporation Code,[276] since the corporation is not rendered incapable of engaging in the business of "planting, cultivation, production, purchase, sale, barter or exchange of all agricultural products."[277]

In fact, after the transfer of the agricultural land is transferred to the qualified FWBs, nothing prevents petitioner HLI from buying or leasing the same lands from them as a collective entity, and continuing to conduct its primary business. In any event, the expropriation of the agricultural lands under the CARL will not result in the dissipation of the assets of petitioner HLI, since it will be compensated by the government for the agricultural lands expropriated, proceeds from which can be used to continue with the business, to fund the lease of agricultural lands, or to pay for any debts or liabilities incurred by petitioner HLI. Whether the stockholders of petitioner HLI will agree to continue with the business or initiate the process of dissolution is a matter that will have to be addressed in another forum, and not before the Court at this time.

With respect to the SCTEX lands, petitioner HLI has not denied receipt of the ₱80,000,000 from the government as just compensation. The just compensation paid for the expropriated lands properly belongs to the qualified FWBs, as they should now be considered as the rightful land owners under the direct

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deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code." (Batas Pambansa Blg. 68, Sec. 40)

[276] "A sale or other disposition shall be deemed to cover substantially all the corporate property and assets if thereby the corporation would be rendered incapable of continuing the business or accomplishing the purpose for which it was incorporated." (Batas Pambansa Blg. 68, Sec. 40)

[277] Amended Article of Incorporation of petitioner HLI; *rollo*, Vol. 3, at 3762-3776.

land transfer option. Having been subjected to expropriation by the government, the SCTEX land is now invariably outside the scope of CARP coverage. However, since the qualified FWBs became the valid landowners before the said expropriation, the just compensation should accrue to them. What they seek — and indeed, what should be conveyed to them — is not only the landholdings *per se*, but also all payments that had rightfully accrued to them as landowners by virtue of the notice of coverage. This amount includes the total of ₱80,000,000 received by petitioner HLI as just compensation, and not just the 3% HLI claims it paid. Although it asserts having distributed 3% of the proceeds or ₱2,400,000, no evidence on the record supports its bare assertion. The amount given is important, as it may decrease petitioner HLI's liability to the qualified FWBs. Be that as it may, this fact does not detract from the qualified FWBs' entitlement to the just compensation paid by the government for lands properly belonging to them.

The division of Hacienda Luisita lands may indeed result in inefficient economies of scale, wherein 6,296 qualified FWBs will receive only a small portion of the land that was claimed by petitioner HLI to be inadequate to significantly improve their economic conditions.[278] Nevertheless, nothing prevents the farmworker beneficiaries from organizing themselves into a cooperative to manage the agricultural lands or to deal with petitioner HLI as suggested by the DAR,[279] considering that

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[278] However, Jeffrey Riedinger presented contrary claims that "that small sugar cane farms were more efficient in terms of total factor productivity" and that "Philippine sugarcane yields were, on average, little more than one-half of those of the small (1 to 2 hectare) owner operated farms of Taiwan, and only one-quarter yields obtained on small owner-operated farms in Maharashtra state in western India." (Riedinger, *supra* note 4, at 80-85) Riedinger even asserted that "[a]nalysis suggests that the workers would be no worse off, indeed might be substantially better off, if they were to purchase the land assets of Hacienda Luisita under the terms of the reform law rather than accept the proposed 'no cost' stock distribution." (*Id.*, at 150)

[279] "DAR has established guidelines on the matter of such allocations and no problem has been encountered in its implementation of the CARP. **By and large for a whole scale cultivation and production, formation of cooperatives has proven to be an effective mechanism to address the**

even CARL makes provisions for such alternatives for farms operated by corporations or associations.[280]

In addition, considering the lapse of the prohibitive period for the transfer of agricultural lands, nothing prevents the FWBs, as direct owner-beneficiaries of the Hacienda Luisita lands, from selling their ownership interest back to petitioner HLI, or to any other interested third-party, such as but not limited to the government, LBP, or other qualified beneficiaries, among others. Considering that the Hacienda Luisita lands were placed under CARP coverage through the SDOA scheme of petitioner HLI on 11 May 1989 and the lapse of the two-year period for the approval of its compliance, the period prohibiting the transfer of awarded lands under CARL[281] has undeniably lapsed. As landowner-beneficiaries, the qualified FWBs are now free to transact with third parties with respect to their land interests, regardless of whether they have fully paid for the lands or not.

To make the qualified FWBs of Hacienda Luisita wait another 10 years from the issuance of the Certificate of Land Ownership

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problem. . . ." (Terminal Report dated 22 September 2005 at 13; *rollo*, Vol. 1, at 398).

[280] "In case it is not economically feasible and sound to divide the land, then it shall be owned collectively by the worker-beneficiaries who shall form a workers' cooperative or association which will deal with the corporation or business association. . . ." (CARL, Sec. 29, 2nd par.)

[281] "Transferability of Awarded Lands. — Lands acquired by beneficiaries under this Act or other agrarian reform laws shall not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP, or to other qualified beneficiaries through the DAR for a period of ten (10) years: Provided, however, That the children or the spouse of the transferor shall have a right to repurchase the land from the government or LBP within a period of two (2) years. Due notice of the availability of the land shall be given by the LBP to the BARC of the *barangay* where the land is situated. The PARCCOM, as herein provided, shall, in turn, be given due notice thereof by the BARC. …

"If the land has not yet been fully paid by the beneficiary, the rights to the land may be transferred or conveyed, with prior approval of the DAR, to any heir of the beneficiary or to any other beneficiary who, as a condition for such transfer or conveyance, shall cultivate the land himself/herself. Failing compliance herewith, the land shall be transferred to the LBP which shall give due notice of the availability of the land in the manner specified in the immediately preceding paragraph.

Award (CLOA) or Emancipation Patent (EP) before being allowed to transfer the land[282] is unduly prohibitive in the instant case. The prohibitive period under the CARL was meant to provide CARP beneficiaries sufficient time to profit from the awarded lands in order to sustain their daily living, pay off the yearly amortization, and earn modest savings for other needs. This period protected them from being influenced by dire necessity and short-sightedness and consequently, selling their awarded lands to a willing buyer (oftentimes the previous landowner) in exchange for quick money. This reasoning ordinarily may have been availing during the first few years of the CARL, but becomes an unreasonable obstruction for the qualified FWBs of Hacienda Luisita, who have been made to endure a null and void SDOA for more than 20 years.

Undeniably, some of the lands under compulsory coverage have become more viable for non-agricultural purposes, as seen from the converted lands of LIPCO and RCBC. In fact, the then Municipality of Tarlac had unanimously approved the Luisita Land Use Plan covering 3,290 hectares of agricultural lands in Hacienda Luisita, owned by, among others, petitioner HLI;[283]

"In the event of such transfer to the LBP, the latter shall compensate the beneficiary in one lump sum for the amounts the latter has already paid, together with the value of improvements he/she has made on the land." (CARL, Sec. 27, as amended; emphasis supplied)

[282] "Lands awarded to ARBs under this Act may not be sold, transferred or conveyed except through hereditary succession or to the Government, or to the LBP, or to other qualified beneficiaries within a period of ten (10) years; Provided, however, that the children or the spouse of the transferor shall have a right to repurchase the land from the government or the LBP within a period of two (2) years from the date of transfer." (DAR Administrative Order No. 02-2009, Part F, 10.2)

[283] "The Sangguniang Bayan of Tarlac, Tarlac, hereby, approves the Luisita Land Use Plan submitted by the Luisita Realty Corporation covering the lands owned by Hacienda Luisita Inc., Central Azucarera de Tarlac, Tarlac Development Corporation, Luisita Golf and Country Club, Inc., Luisita Realty Corporation, [illegible] in the Luisita Industrial Park and others, covering over Three Thousand Two Hundred Ninety (3,290) hectares, as enumerated in the list of transfer certificates of titles, which list, including photocopies of the titles referred to in the list. Is hereto attached as Annex 'B', (hereinafter

and reclassifying them for residential, commercial, industrial or institutional use.[284] The development of these kinds of land in Hacienda Luisita would better serve the local communities through the increase in economic activities in the area and the creation of more domestic employment.

Similarly, qualified FWBs should be afforded the same freedom to have the lands awarded to them transferred, disposed of, or sold, if found to have substantially greater economic value as reclassified lands. The proceeds from the sale of reclassified lands in a free, competitive market may give the qualified FWBs greater options to improve their lives. The funds sourced from the sale may open up greater and more diverse entrepreneurial opportunities for them as opposed to simply tying them to the awarded lands. Severely restricting the options available to them with respect to the use or disposition of the awarded lands will only prolong their bondage to the land instead of freeing them from economic want. Hence, in the interest of equity, the ten-year prohibitive period for the transfer of the Hacienda Luisita lands covered under the CARL shall be deemed to have been lifted, and nothing shall prevent qualified FWBs from negotiating the sale of the lands transferred to them.

The determination of the best feasible way to manage the lands is best left to the qualified FWBs themselves,[285] to be

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referred to as the 'Luisita lands'), which is hereby approved for integration/inclusion in the general zoning map of the Municipality." (Sangguniang Bayan Resolution No. 280 dated 01 September 1995, Sec. 1; *rollo,* Vol. 3, at 3594-3595)

[284] "The Luisita Lands included in the Luisita Land Use Plan, whose present classification is agricultural, are **hereby reclassified to residential, commercial, industrial or institutional use**, as the case may be, in accordance with the Luisita Land Use Plan, as said Luisita Lands **have been found to have substantially greater economic value for residential, commercial, or industrial purposes**. Furthermore, the Luisita Lands included in the Luisita Land Use Plan, whose present classification, as per its tax declaration or other official government document, is non-agricultural, **is hereby confirmed as non-agricultural and shall remain as non-agricultural** in accordance with the Luisita Land Use Plan." (*Id.*, Sec. 2; emphasis supplied)

[285] "JUSTICE BERSAMIN: All right, the last question that I would like you to answer is this — is this land if it were to be distributed among your members

assisted by public respondent DAR. Public respondent is now called upon to put into action its assurances to the Court that it is fully prepared to enforce compulsory coverage and to extend support to the FWBs to make an economic success of direct land distribution:

SECRETARY DELOS REYES:

… The government is prepared to extend support based on R.A. 9700. We are mandated to extend credit support to the farmer beneficiaries, not only in Hacienda Luisita, but also in the other areas that we are acquiring land. …

JUSTICE ABAD:

No, but we have to be realistic. I'm saying is that if we do this now, in this particular case, do you have enough support for the farmers? And can you guarantee that they will be able to farm their hectare land?

SECRETARY DELOS REYES:

Yes, Your Honor. …

JUSTICE ABAD:

So you believe that this can be done in Hacienda Luisita?

SECRETARY DELOS REYES:

Yes, Your Honor. …

JUSTICE ABAD:

You gave me comfort that if we annul this SDOA at least the government will answer for the result?

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included, among the farmers your members included, would you go back to sugar production or sugar cane production or planting?

ATTY. PAJILDA: It is a matter not yet discussed by the group but our contention Your Honor is that if the whole of the agricultural land of Luisita should be awarded to the farmworkers it should not be parcelized and given to them individually but it should be owned or under the control or management of the farmers cooperative where this cooperative will be the one to run the business of the organization, Your Honor.

JUSTICE BERSAMIN: So you would fall back on Section 29?

ATTY. PAJILDA: Yes, Your Honor." (TSN dated 24 August 2010, at 186-187)

SECRETARY DELOS REYES:

Yes, Your Honor.[286]

JUSTICE SERENO:

… Because that is basically the option of land distribution is that the farmers must learn to be an entrepreneur. … Now to what extent are you prepared to create a program for this transformation of the farmer? As an entrepreneur of course you have outlined the steps, and then a farmer into a stockholder because if you are saying that there are about ten (10) or eleven (11) SDOs and many of them are being questioned, then we might find ourselves with a possibility that even this exception is not really viable under that concept. So is the DAR ready to try to give lessons in corporate citizenship in being a stockholder to his farmer beneficiaries?

SECRETARY DELOS REYES:

Yes, Your Honor, in the same way that we are prepared to transform the farmers into entrepreneurs. We are prepared to undertake the task.[287] (Emphasis supplied)

For indeed, agrarian reform is broader than just giving farmworkers land to till.[288] Rather, it is multi-dimensional in scope, and includes extending useful public services to increase agricultural productivity and to ensure independence and economic security for themselves and their families:[289]

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[286] TSN dated 24 August 2010, at 104-108.

[287] TSN dated 24 August 2010, at 120-121.

[288] "For many years, land reform has been considered an end in itself, a device to promote social justice. Today it is regarded not only as a tool of social justice but as a definite part of agricultural development. Land ownership gives Juan Cruz the pride of possession, but this is meaningless unless Cruz gets every kind of assistance to draw the most out of his plot. Mere landownership is like gold turned to sand. If land reform is indeed part of agricultural development, then increased and efficient production is its goal" (Mariano N. Querol, *LAND REFORM IN ASIA* [Solidaridad Publishing House 1974] at 25)

[289] "Agrarian reform involves both redistribution of landownership (land reform) and the development of complementary credit, extension, infrastructure, pricing, and research programs." (Riedinger, *supra* note 4, at 2)

Agrarian Reform is in effect, quite a distinct thing, more complex and more profound, from this simple aspect of the distribution of land conceived of at times by an already decrepit revolutionism. Also, it is more than the convenience of giving up ownership of the land to the campensino so as to tie him to the soil and increase production, because he invests more, as some think. Agrarian reform is much more than this: It is based on the right of man who tills the soil that this shall be useful for his welfare and independence; so that the concept must include, in addition to the land problem itself, that of credit to enable him to work the soil and that of security of markets to make it truly productive.[290]

V.

Petitioners-in-intervention RCBC and LIPCO are innocent purchasers for value and subsequent events preclude the legal and physical impossibility of the return of the converted lands.

The lands in Hacienda Luisita that were converted into industrial lands and sold to petitioners-in-intervention can no longer be the subject of compulsory coverage, especially since these were transferred to innocent purchasers for value. In any event, compulsory coverage and transfer of the land is no longer feasible, considering the supervening events attendant in the instant case.

To begin with, the rules do not prohibit the sale or transfer of lands, which have already been converted into commercial or industrial lands. Under DAR Administrative Order No. 10-88, the minimum criteria for keeping the lands intact and unfragmented are limited to viable agricultural lands and with potential for growth and increased profitability.[291] Hence, the obligation of the corporate landowner under a stock distribution agreement was to prevent the malicious sale or transfer of agricultural lands to deprive stockholder-farmer-beneficiaries of their livelihood.

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[290] Lynn Smith Thomas, *AGRARIAN REFORM IN LATIN AMERICA* (1965), as cited in Milagros A. German, *THE AGRARIAN LAW IN THE NEW SOCIETY* (U. P. Law Center 1980) at 75-76.

[291] DAR Administrative Order No. 10-88. Sec. 5 (a).

However, nothing prevents a landowner from applying for the conversion of agricultural lands into commercial or industrial lands that would eventually be transferred or sold to third parties, as provided for under CARL.[292] It is not denied that, at times, converting agricultural lands to other uses may be more economical or profitable, rather than maintaining them in their present nature. It would be folly to insist on maintaining agricultural lands that are no longer profitable in their present state and deprive the landowners of the business opportunity to maximize available resources. Landowners shall be free to transfer or sell agricultural lands converted into other uses, for as long as the applications for conversion comply with the guidelines set by law and duly approved by the DAR.[293] In the instant case, nothing prevented petitioner HLI from applying for the conversion of the 500 hectares of the reclassified agricultural lands into commercial and industrial lands and eventually transferring these to petitioners-in-intervention.

It will be recalled that the 500-hectare land was first reclassified from agricultural to commercial, industrial and residential purposes

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[292] "After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner with respect only to his/her retained area which is tenanted, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: Provided, That if the applicant is a beneficiary under agrarian laws and the land sought to be converted is the land awarded to him/her or any portion thereof, the applicant, after the conversion is granted, shall invest at least ten percent (10%) of the proceeds coming from the conversion in government securities: Provided, further, That the applicant upon conversion shall fully pay the price of the land: Provided, furthermore, That irrigated and irrigable lands, shall not be subject to conversion: Provided, finally, That the National Irrigation Administration shall submit a consolidated data on the location nationwide of all irrigable lands within one (1) year from the effectivity of this Act." (CARL, Sec. 65)

[293] Reclassified agricultural lands must undergo the process of conversion in the DAR before they may be used for other purposes. (*Ros v. DAR*, G.R. No. 132477, 31 August 2005, 468 SCRA 471; *DAR v. Polo Coconut Plantation, Co., Inc.*, G.R. Nos. 168787 and 169271, 03 September 2008, 564 SCRA 78)

by the *Sangguniang Bayan* of Tarlac[294] in the general zoning map of the then Municipality of Tarlac. Thereafter, the DAR approved the application for conversion into industrial use.[295] Thus, when petitioner HLI partitioned and transferred the property to Luisita Realty, Inc. (200 hectares) and Centennary Holdings, (300 hectares), there was no impediment thereto.

Since the conversion of the 500-hectare reclassified lands in Hacienda Luisita was in compliance with the guidelines set by the law and duly approved by the DAR, then petitioners-in-intervention RCBC and LIPCO, as subsequent purchasers for fair value of a portion of the property and holders of titles thereto, cannot now be defeated in their rights.

An innocent purchaser for value and in good faith is one who "buys the property of another without notice that some other person has a right to or interest in the property and who pays the full and fair price for it at the time of the purchase, or before they get notice of some other persons' claim of interest in the property."[296] A person dealing with registered land has a right to rely on the Torrens certificate of title and to dispense with the need for inquiring further, except when the party has actual knowledge of the facts and circumstances that would impel a reasonably cautious man to make such inquiry or when the purchaser has knowledge of a defect or the lack of title of the vender or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property in litigation.[297]

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[294] Sangguniang Bayan Resolution No. 280 dated 01 September 1995 (*rollo*, Vol. 3, at 3594-3595); Supervisory Group and AMBALA Comment/ Opposition dated 17 December 2006, par. 7.1, at 16 (*rollo*, Vol. 1, at 545); RCBC Petition-in-Intervention dated 18 October 2007, par. 5 at 13 (*rollo*, Vol. 2, at 1372).

[295] DARCO Conversion Order No. 030601074-764-(95), Series of 1996; *rollo*, Vol. 1, at 651-664.

[296] *Coastal Pacific Trading, Inc., v. Southern Rolling Mills, Co., Inc.*, G.R. No. 118692, 28 July 2006, 497 SCRA 11.

[297] *Rufloe v. Burgos*, G. R.No. 143573, 30 January 2009, 577 SCRA 264.

In *Vencilao v. Court of Appeals,* the Court explained:

> As a general rule, where the certificate of title is in the name of the vendor when the land is sold, the vendee for value has the right to rely on what appears on the face of the title. He is under no obligation to look beyond the certificate and investigate the title of the vendor appearing on the face of the certificate. By way of exception, the vendee is required to make the necessary inquiries if there is anything in the certificate of title which indicates any cloud or vice in the ownership of the property. Otherwise, his mere refusal to believe that such defect exists, or his willful closing of his eyes to the possibility of the existence of a defect in his vendor's title, will not make him an innocent purchaser for value if it afterwards develops that the title was in fact defective, and it appears that he had such notice of the defect as would have led to its discovery had he acted with that measure of precaution which may reasonably be required of a prudent man in a like situation.[298]

At the time petitioners-in-intervention bought the converted properties, there was nothing in the titles thereto that would alert them to any claim or defect.

The 500-hectare converted land was partitioned and transferred to Luisita Realty, Inc., and Centennary Holdings. Luisita Realty paid petitioner HLI the amount of ₱500,000,000 for the 200-hectare land, and two titles covering 100 hectares each were issued in the former's name. Meanwhile, Centennary Holdings received the 300-hectare land in exchange for the issuance of 12,000,000 shares of stock in favor of petitioner HLI, a title to which was likewise issued. The same 300-hectare land was eventually sold to petitioner-in-intervention LIPCO for ₱750,000,000, and title was transferred to it. When petitioner-in-intervention LIPCO failed to pay its loan from petitioner-in-intervention RCBC, it entered into a *dacion en pago* agreement with RCBC, wherein portions of the 300-hectare land were transferred in exchange for writing off the loan then amounting to ₱431,695,732.10. Both LIPCO and RCBC were issued separate titles over the same 300-hectare converted land.

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[298] G.R. No. 123713, 01 April 1998, 288 SCRA 574.

Prior to acquiring the property Centennary Holdings, the only restrictions appearing in the title of the 300-hectare property were the Secretary's Certificate in favor of Teresita Lopa and Shintaro Murai.[299] After LIPCO purchased the property and before a portion was transferred to petitioner-in-intervention RCBC through the *dacion en pago*, the only restrictions appearing on the face of LIPCO's title[300] to the property were the following: (1) Deed of Restrictions; (2) Secretary's Certificate in favor of Koji Komai and Kyosuke Nori; and (3) the Real Estate Mortgage in favor of RCBC for ₱300,000,000. Hence, there was nothing in the titles to the properties that would have alerted petitioners-in-intervention of any defect at the time these properties were sold to them. No adverse claim or pending litigation was annotated in the title that would defeat or supersede the claims of petitioners-in-intervention as purchasers of the property.

In fact, the Deed of Restrictions in LIPCO's title specifically constrained the use and occupancy of the property "solely as an industrial estate for non-polluting, general, industrial and manufacturing activities," and required prior written consent of petitioner HLI before the property could be used as a "vegetable/fruit plantation."[301] Thus, LIPCO and RCBC had no inkling that the 300-hectare property would be used for anything but for industrial and manufacturing activities. The actions of both LIPCO and RCBC in dealing with the property were in conformity with the use and purpose of the land as an industrial estate. They had every reason to believe in good faith that the property was available for industrial purposes and free from any defect with respect to CARP coverage.

That the property was previously agricultural land that was subject to conversion is not sufficient notice to deny the rights of petitioners-in-intervention as innocent purchasers for value. At the time LIPCO purchased the property for purposes of establishing an industrial estate on 30 July 1998, the land had

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[299] TCT No. 292091, *rollo,* Vol. 2, at 1492-1493.

[300] TCT No. 310985, *rollo,* Vol. 2, at 1514-1518.

[301] TCT No. 310985, *id.*, at 1515.

already been converted from an agricultural into industrial land, with the imprimatur of the DAR no less. If at all, the DAR's conversion order was precisely what assured LIPCO that the property was approved for sale and not subject to CARP coverage. In fact, private respondents' petitions were filed after the 300-hectare property had already been converted and transferred by petitioner HLI to Centennary Holdings and thereafter sold to LIPCO.

That the land was covered by a reclassification ordinance of the local government and by the DAR Conversion Order only bolstered their good faith belief in the validity of the sellers' titles to the property. In addition, the Housing and Land Use Regulatory Board (HLURB) even registered the 300-hectare land of LIPCO and granted the owner thereof the license to sell the land.[302]

Neither can it be denied that a full and fair consideration was given in exchange for the said lands. LIPCO paid the total amount of ₱750,000,000 to Centennary Holdings in exchange for the 300-hectare land;[303] while RCBC wrote off a portion of LIPCO's debt amounting to ₱431,695,732.10 when it received the two titles to the subdivided 300-hectare lands.[304]

With respect to petitioner-in-intervention RCBC, the Court has previously exacted more than just ordinary diligence from banks and other financial institutions in the conduct of their financial dealings with real properties. The standard required of banks and other financial institutions, however, does not deprive them of the protections afforded innocent purchasers for value, once they have shown that they have exercised the level of diligence required. Thus, the Court ruled:

While we agree with petitioners that GSIS, as a financial institution, is bound to exercise more than just ordinary diligence in the conduct

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[302] HLURB Certificate of Registration No. 00794 and HLURB License to Sell No. 00776 both dated 26 December 1997; *rollo*, Vol. 3, at 4399-4400.

[303] *Rollo*, Vol. 2, at 1499-1513.

[304] *Rollo*, Vol. 2, at 1523-1527.

of its financial dealings, we nevertheless find no law or jurisprudence supporting petitioners' claim that financial institutions are not protected when they are innocent purchasers for value. When financial institutions exercise extraordinary diligence in determining the validity of the certificates of title to properties being sold or mortgaged to them and still fail to find any defect or encumbrance upon the subject properties after said inquiry, such financial institutions should be protected like any other innocent purchaser for value if they paid a full and fair price at the time of the purchase or before having notice of some other person's claim on or interest in the property.[305]

In the instant case, petitioner-in-intervention RCBC has displayed an observance of extraordinary degree of diligence in acquiring the property from LIPCO. Petitioner-in-intervention conducted ocular inspections and investigations of the properties to be the subjected to *dacion en pago*, in accordance with its credit policies. It likewise confirmed that LIPCO had possession over the lands, and that there was no other possessor or occupant thereof. It even confirmed the ownership and possession of LIPCO, with the residents in the vicinity endorsing the latter's plans to create an industrial estate.[306]

To allow the converted land to be included in the compulsory coverage of the CARL would not only overturn the finality of the conversion order properly issued by the DAR, but also deprive petitioners-in-intervention of property without due process of law.

In *Spouses Villorente v. Aplaya Laiya Corporation*, the Court in no uncertain terms upheld the finality of a conversion order:

Indubitably, the Conversion Order of the DAR was a final order, because it resolved the issue of whether the subject property may be converted to non-agricultural use. The finality of such Conversion Order is not dependent upon the subsequent determination, either by agreement of the parties or by the DAR, of the compensation due to the tenants/occupants of the property caused by its conversion

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[305] *Ty v. Queen's Row Subdivision*, G.R. No. 173158, 04 December 2009, 607 SCRA 324.

[306] *Rollo*, Vol. 3, at 4357-4362.

to non-agricultural use. Once final and executory, the Conversion Order can no longer be questioned.[307]

In this case, the DAR's conversion order has already attained finality and can no longer be questioned, especially by a collateral attack on the SDOA that includes the converted lands. Not only has the conversion order been issued in accordance with law and the rules, it has also been executed with the subsequent transfers of titles to the lands to the present owners, Luisita Realty, Inc., LIPCO and RCBC. To reverse the final conversion order through the nullification of the SDOA would work injustice to LIPCO and RCBC, who were not even parties to the PARC proceedings below. Moreover, the indefeasibility of titles under the Torrens system[308] would be put in peril, if the questioned PARC Resolution would be allowed to nullify a claim of ownership through a collateral proceeding. Especially in this case, LIPCO and RCBC were not notified of the proceedings below nor did they participate therein. Yet, their registered titles would be impugned by an indirect attack.[309] The time is ripe for this Court to settle lingering doubts as to the finality of conversion orders of the DAR, in order to secure the rights and benefits to which farmworkers are entitled and to shore up investor's confidence in the reliability of titles to the converted lands that they have obtained and developed.[310]

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[307] G.R. No. 145013, 31 March 2005, 454 SCRA 493.

[308] "[A] Torrens title is evidence of indefeasible title to property in favor of the person in whose name the title appears. It is conclusive evidence with respect to the ownership of the land described therein." (*Vda. de Aguilar, v. Spouses Alfaro,* G.R. No. 164402, 05 July 2010, citing *Baloloy v. Hular*, 481 Phil. 398, 410 [2004], and *Carvajal v. Court of Appeals,* 345 Phil. 582, 594 [1997])

[309] "Indeed, a certificate of title, once registered, should not thereafter be impugned, altered, changed, modified, enlarged or diminished, except in a direct proceeding permitted by law. Otherwise, reliance on registered titles would be lost." (*Ugale v. Gorospe*, G.R. No. 149516, 11 September 2006, 501 SCRA 376)

[310] "What the Philippine government must do is to clarify existing rules and regulations concerning land use and land conversions in order to avoid

Nevertheless, the Court notes that Luisita Realty, which received the 200-hectare portion of converted land from petitioner HLI, failed to intervene in the instant case. Despite the notice of coverage issued under the questioned PARC resolution which included the converted lands it purchased, Luisita Realty did not seek to defend its claims of ownership in the instant case, unlike petitioners-in-intervention LIPCO and RCBC. Although the right to due process disallows decisions of the court to bind those who are not parties to the case,[311] it is deemed to have waived its right to be heard. Furthermore, Luisita Realty derives its right of ownership over the converted land from petitioner HLI, who is a party to the instant case. If petitioner HLI's ownership of the 200-hectare converted land is assailed, Luisita Realty cannot claim a greater right than that of its predecessor. Since all of petitioner HLI's agricultural lands in Hacienda Luisita are now subject to direct land transfer, those transferred by petitioner HLI to Luisita Realty are necessarily covered. Unlike petitioners-in-intervention LIPCO and RCBC, who timely raised and defended their claims as innocent purchasers for value before the Court, Luisita Realty kept its silence and did not bother to establish its rights over the converted lands in the proceedings before the Court. Absent any proof of Luisita Realty's status as an innocent purchaser for value, the 200-hectare converted lands it received from petitioner HLI shall likewise be subject to direct land transfer, without prejudice to its right to claim just compensation under the law and the rules.

In any case, the supervening events have further established that the areas so converted are no longer economically feasible

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disputes that have the potential of encouraging domestic unrest and discoursing foreign investment particularly in industrial and real estate development. Foreign investors need to know that the land they acquire for development will not be subject to later disputes, while farmer-beneficiaries need to be sure that they still obtain the land they are entitled to under the CARP." (Janeth San Pedro, Agrarian Reform's Constraint on Land Acquisition and Development for Non-Agricultural Use in the Philippines, 12 TRANSNAT'L LAW. 319 [1999] at 351)

[311] *Laguinilla v. Velasco,* G.R. No. 169276, 16 June 2009, 589 SCRA 224, citing *Aron v. Realon,* G.R. No. 159156, January 31, 2005, 450 SCRA 372, 389.

and sound for agricultural purposes. The subsequent development of and partial improvements[312] on the converted lands of petitioners-in-intervention RCBC and LIPCO only affirm their viability and feasibility for industrial and commercial purposes, and not for agricultural use.

That these converted lands were declared as a Special Economic Zone by then President Ramos (Luisita Industrial Park II) only emphasizes the desirability and economy of using them as industrial lands. Before they may be used for other purposes, reclassified agricultural lands must undergo the process of conversion;[313] the DAR's approval of the conversion of agricultural land into an industrial estate is a condition precedent for its conversion into an ecozone.[314] A proposed ecozone cannot be considered for presidential proclamation, unless the landowner first submits to PEZA a land-use conversion clearance certificate from the DAR.[315]

Prior to the President's approval of the Luisita Industrial Park II as a special economic zone on 22 April 1998,[316] the DAR had already approved the conversion of the land to an

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[312] Petitioner-in-intervention RCBC has claimed that the property has been partially developed into an industrial estate with a main road fully paved with proper drainage and equipped with a power control house, deep well and water tanks, drainage reservoir and STP, concrete perimeter security fence, and security gate house. (Petitioner-in-intervention RCBC's Memorandum dated 23 September 2010, at 85) On the other hand, petitioner-in-intervention LIPCO claims 62% completion of its 115.779 hectare property, where concrete roads, a power control house, an elevated water tank, two main gates, a drainage reservoir with a release gate, a drying tower, and an aceration tank is already put in place. (Petitioner-in-intervention LIPCO's Memorandum dated 23 September 2010, at 41)

[313] *Ros v. DAR*, G.R. No. 132477, 31 August 2005, 468 SCRA 471.

[314] *DAR v. Polo Coconut Plantation, Co., Inc.*, G.R. Nos. 168787 and 169271, 03 September 2008, 564 SCRA 78, citing Republic Act No. 7916, Sec. 5 and DAR Administrative Order No. 1, s. 1999, Sec. 6(e).

[315] *DAR v. Polo Coconut Plantation, Co., Inc., id.*, citing Rules and Regulation to Implement R.A. 7916. Part III, Rule IV, Sec. 3.

[316] Presidential Proclamation No. 1207 dated 22 April 1998; *rollo*, Vol. 3, at 3400-3402.

industrial zone on 14 August 1996.[317] It can be deduced that the presidential proclamation of the converted land as a special economic zone was a logical progression arising from the earlier intention to use the land for industrial purposes. This intention was the reason why the DAR allowed the conversion in the first place. Thus, agricultural land that has been approved for conversion by the DAR for commercial or industrial purposes, **and** subsequently proclaimed as a special economic zone by the President, can no longer be subject to coverage under the CARP.

To order that these lands now revert to agricultural use for the planting of sugar would be more costly and disadvantageous, since it involves undoing these improvements and rehabilitating the land to become viable for planting. If the DAR were to order the expropriation of the 300-hectare converted lands, then payment of just compensation must be made to petitioners-in-intervention as lawful and titled owners at the time of the taking. Such a scenario will not bode well for the cash-strapped agrarian reform program, since the present market value of the lands has vastly increased due to the partial improvements and developments introduced therein. Petitioner-in-intervention LIPCO even claims to have paid US$14,782,956.30 for the civil works and power supply system built on the converted land by its contractor, Hazama Philippines, Inc.[318] Worse, additional resources would be needed to remove these improvements and rehabilitate the industrial estate for agricultural farming. As found by the DAR, the converted lands were not irrigated and were in need of new irrigation facilities to make them viable for agriculture.[319]

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[317] DARCO Conversion Order No. 030601074-764-(95), Series of 1996; *rollo*, Vol. 1, at 651-664.

[318] Petitioner-in-Intervention LIPCO's Memorandum dated 23 September 2010, par. 73.1, at 41.

[319] "4. Accordingly, thought the subject area is included in the NIA service are, the HLI has been using the NIA irrigation facilities because of the complaint of the farmworkers downstream (outside the HLI) that they are not getting enough water, if HLI tapped it. To make matters worse, the eruption of Mt. Pinatubo has caused the lahar siltation to close the O'Donnel River which is

Be that as it may, the Court should not, however, turn a blind eye to the fact that the proper recipients of the purchase price for the transferred and converted lands are the FWBs, under the compulsory coverage scenario. Had the qualified FWBs opted for direct land transfer of the entire Hacienda Luisita lands, then Centennary Holdings, LIPCO and RCBC would have all been dealing directly with them for the transfer and purchase of the 300-hectare lands. Instead, the stock distribution option placed the proceeds of the sale of these converted lands unto the hands of petitioner HLI as the corporate landowner. Considering that the land is to be redistributed to the qualified FWBs, and that the 300-hectare converted lands are no longer feasible as agricultural lands, it is to the best interest of justice and equity that petitioner HLI should return the amounts received from the sale and/or transfer of the converted lands, net of the taxes and other legitimate expenses actually incurred in the sale of the land. This is without prejudice to the reasonable offset of the amounts owed by the qualified FWBs to petitioner HLI from the benefits they received as stockholders under the SDOA.

FINAL NOTE

It is not denied that TADECO and petitioner HLI have attempted to give life to the pronouncement of agrarian reform through the distribution of shares of stock to the FWBs.[320] Sadly, the mechanism they resorted to was fatally flawed and unjust in its implementation. Simply put, the SDOA has failed as an alternative to land redistribution scheme in empowering the landless farmworkers of Hacienda Luisita. An agrarian system that perpetuates excessive dependence on the few landed by the

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the main source of the irrigation water of Tarlac. Without other source to its irrigation water requirement, the HLI heavily depends on ground water pumping at 50 feet deep." (DAR Conversion Order No. 0306017074-764-(95), s. of 1996, at 6-7; *rollo*, Vol. 2, at 1474-75)

[320] "This Agreement is entered into by the parties herein in the spirit of the Comprehensive Agrarian Reform Program (C.A.R.P.) of the government and with the supervision of the Department of Agrarian Reform, **with the end in view of improving the lot of the qualified beneficiaries of the stock distribution plan and obtaining for them greater benefits**." (SDOA dated 11 May 1989, at 4; *rollo*, Vol. 1, at 150; emphasis supplied)

many landless carries within itself the seed of its own disintegration.[321]

I vote to affirm the PARC's present resort to compulsory coverage of the agricultural lands, which is required under CARL in order to uphold the constitutional goal of land redistribution. Agrarian reform was aimed at placing the poor farmers on a parity with the landowner. As an alternative to direct land distribution, the stock distribution option under CARL was intended to hand control of the lands indirectly to the farmer by designating them as stockholders of the corporate landowner. However, instead of ensuring their freedom with the promise of corporate control, the petitioner HLI's SDOA made them subservient and minority stockholders, who continue to be beholden to the good graces of the majority corporate landowner.

Under the SDOA, qualified FWBs were awarded "intangible paper" assets that became worthless, as the fortunes of petitioner HLI went south, instead of receiving "real and income-generating" assets, which offered a multitude of possibilities for their use. Despite the good intention of coming up with an alternative option under the agrarian land reform program, the failure of the SDOA to fulfill the promises of agrarian social justice in Hacienda Luisita leaves no other legal option than to order the unconditional and complete transfer of the agricultural lands to the qualified FWBs, not in the next generation, but now. In ordering the immediate redistribution of the Hacienda Luisita agricultural lands, what is sought is the reinvigoration of the constitutional mandate for agrarian reform and the empowerment of the farmworker-beneficiaries by giving them the means to determine their own destiny.[322]

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[321] Jesus M. Montemayor, The Economic, Social and Political Rationale of Agrarian Reform, AGRARIAN REFORM LAND LAW (UP Law Center, 1975), at 210.

[322] "Mr. President, no one will argue with the productive potential inherent in people who own the land they till. To own land is to hold one's destiny in his own hands. This is why rural development must be anchored on land reform." (Sen. Heherson Alvarez, Sponsorship Speech of the CARL in Rufus B. Rodriguez, COMPREHENSIVE AGRARIAN REFORM LAW ANNOTATED [2004] at 175)

DISPOSITIVE PORTION

IN VIEW OF THE FOREGOING, I vote to **AFFIRM WITH MODIFICATIONS** PARC Resolution No. 2005-32-01 dated 22 December 2005 and Resolution No. 2006-34-01 dated 03 May 2006. I dissent from the majority's position with respect to how they modified the questioned PARC Resolutions. I would direct the modifications of the PARC Resolutions in the following manner.

The agricultural lands of TADECO and petitioner HLI are hereby ordered to be subject to compulsory coverage by the DAR. The previous approval of the SDOA is hereby **REVOKED**, and the parties thereto are hereby ordered restored to their previous states, subject to the following conditions:

1. Agricultural lands covered by CARL and previously held by TADECO, including those transferred to petitioner HLI, shall be subject to compulsory coverage and immediately distributed to the 6,296 original qualified FWBs who signed the SDOA or, if deceased, their heirs, subject to the disposition of the converted lands expressed in the paragraph after the next, but shall necessarily exclude only the following:

   a. 300 out of the 500 hectares of converted lands, now in the name of LIPCO and RCBC;

   b. 80-hectares of SCTEX lands; and

   c. homelots already awarded to the qualified FWBs.

2. Petitioner HLI and Luisita Realty, Inc., shall be entitled to the payment of just compensation for the agricultural lands and the 200-hectare converted lands, respectively, at the time of the actual taking at fair market value, which shall be determined by the DAR; petitioner HLI shall not be held liable for the payment of rentals for the use of the property.

3. All shares of stock of petitioner HLI issued to the qualified FWBs, as beneficiaries of the direct land transfer, are nullified; and all such shares are restored to the name of TADECO, insofar as it transferred assets and liabilities to petitioner HLI, as the spin-off corporation; but the shares issued to non-qualified FWBs

shall be considered as additional and variable employee benefits and shall remain in their names.

4. Petitioner HLI shall have no claim over all salaries, wages and benefits given to farmworkers; and neither shall the farmworkers, qualified or not, be required to return the same, having received them for services rendered in an employer-employee relationship.

5. Petitioner HLI shall be liable to the qualified FWBs for the value received for the sale or transfer of the 300 out of the 500 hectares of converted lands, specifically the equivalent value of 12,000,000 shares of Centennary Holdings; for the 300-hectare land assigned, but not less than ₱750,000,000; and the money received from the sale of the SCTEX land, less taxes and other legitimate expenses normally associated with the sale of land.

6. Petitioner HLI's liability shall be offset by payments actually received by qualified FWBs under the SDOA, namely:

a. Three percent (3%) total gross sales from the production of the agricultural lands;[323]

b. homelots awarded to qualified FWBs;

c. any dividend given to qualified FWBs; and

d. proceeds of the sale of the 300-hectare converted land and SCTEX land, if any, distributed to the FWBs.[324]

The DAR is **DIRECTED** to determine the scope of TADECO's and/or petitioner HLI's agricultural lands that should have been included under the compulsory coverage of CARL at the time

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[323] Based on its own records, petitioner HLI distributed the 3% production share to qualified FWBs amounting to ₱151,386,000 from 1989-2005. (Report on Salaries, Benefits and Credit Privileges; *rollo*, Vol. 3, at 3759-3761)

[324] Private respondents Supervisory Group and AMBALA admit that ₱37,500.000 was distributed to the FWBs as part of the sales of the proceeds of the converted 500 hectare lands. (Memorandum dated 25 November 2005 filed in the PARC, par. 46, at 19 [*rollo*, Vol. 1, at 728]; see also petitioner HLI's Motion for Reconsideration dated 02 January 2006, at 20 [*rollo*, Vol. 1, at 752])

the SDOA was executed on 11 May 1989, but excluding the lands mentioned above. The lands of TADECO not covered by the SDOA should be covered by this ruling, after appropriate determination by DAR, considering that they were covered by CARL but operationally excluded therefrom when TADECO unilaterally assigned to the spin-off HLI only 4,916 hectares of the 6,443 hectares it owned. The DAR is also **ORDERED** to monitor the land distribution and extend support services that the qualified farmworker-beneficiaries may need in choosing the most appropriate and economically viable option for land distribution, and is further **REQUIRED** to render a compliance report on this matter one-hundred eighty (180) days after receipt of this Order. The compliance report shall include a determination of the exact land area of Hacienda Luisita that shall be subject to compulsory coverage in accordance with the Decision.

Petitioner HLI is **REQUIRED** to render a complete accounting and submit evidentiary proof of all the benefits given and extended to the qualified FWBs under the void SDOA — including but not limited to the dividends received, homelots awarded, and proceeds of the sales of the lands, which shall serve as bases for the offset of its liabilities to the qualified FWBs — and its accounting shall be subject to confirmation and verification by the DAR.

All titles issued over the 300-hectare converted land, including those under the names of petitioners-in-intervention Rizal Commercial Banking Corporation and Luisita Industrial Park Corporations and those awarded as homelots are hereby **AFFIRMED** and **EXCLUDED** from the notice of compulsory coverage. The 200-hectare converted lands transferred to Luisita Realty, Inc., by petitioner Hacienda Luisita, Inc., is deemed covered by the direct land transfer under the CARP in favor of the qualified FWBs, subject to the payment of just compensation.

The Temporary Restraining Order issued on 14 June 2006, enjoining the implementation of the questioned PARC Resolution and Notices of Coverage, is hereby **LIFTED**.

EN BANC

[G.R. No. 183711. July 5, 2011]

EDITA T. BURGOS, *petitioner, vs.* **PRESIDENT GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, MAJ. GEN. DELFIN BANGIT, LT. COL. NOEL CLEMENT, LT. COL. MELQUIADES FELICIANO, DIRECTOR GENERAL OSCAR CALDERON,** *respondents.*

[G.R. No. 183712. July 5, 2011]

EDITA T. BURGOS, *petitioner, vs.* **PRESIDENT GLORIA MACAPAGAL ARROYO, GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, LT. COL. MELQUIADES FELICIANO, LT. COL. NOEL CLEMENT,** *respondents.*

[G.R. No. 183713. July 5, 2011]

EDITA T. BURGOS, *petitioner, vs.* **CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES, GEN. HERMOGENES ESPERON, JR., Commanding General of the Philippine Army, LT. GEN. ALEXANDER YANO; Chief of the Philippine National Police, DIRECTOR GENERAL AVELINO RAZON, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; RULE ON THE WRIT OF *AMPARO*; PROVIDES THAT ANY PERSON WHO OTHERWISE DISOBEYS OR RESISTS A LAWFUL PROCESS OR ORDER OF THE COURT MAY BE PUNISHED FOR CONTEMPT. — We also note that the Office of the Judge Advocate General (*TJAG*) failed and/or refused to provide the CHR with copies of documents relevant

to the case of Jonas, and thereby disobeyed our June 22, 2010 Resolution. To recall, we issued a Resolution declaring the CHR as the Court's directly commissioned agency tasked with the continuation of the investigation of Jonas' abduction and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court. In this same Resolution, we required the *then incumbent* Chiefs of the AFP and the PNP to make available and to provide copies to the CHR, of all documents and records in their possession and as the CHR may require, *relevant* to the case of Jonas, subject to reasonable regulations consistent with the Constitution and existing laws. x x x Section 16 of the Rule on the Writ of *Amparo* provides that any person who otherwise disobeys or resists a lawful process or order of the court may be punished for contempt x x x.

2. ID.; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; WRIT OF *HABEAS CORPUS*; ISSUED ANEW IN CASE AT BAR. — In light of the new evidence obtained by the CHR, particularly the Cabintoy evidence that positively identified Lt. Baliaga as one of the direct perpetrators in the abduction of Jonas and in the interest of justice, we resolve to set aside the CA's dismissal of the *habeas corpus* petition and issue anew the writ of *habeas corpus* returnable to the Presiding Justice of the CA who shall immediately refer the writ to the same CA division that decided the *habeas corpus* petition (CA-GR SP No. 99839). For this purpose, we also order that Lt. Baliaga be impleaded as a party to the *habeas corpus* petition and require him — together with the incumbent Chief of Staff, AFP; the incumbent Commanding General, Philippine Army; and the Commanding Officer of the 56th IB at the time of the disappearance of Jonas, Lt. Col. Feliciano — to produce the person of Jonas and to show cause why he should not be released from detention. The CA shall rule on the merits of the *habeas corpus* petition in light of the evidence previously submitted to it, the proceedings already conducted, and the subsequent developments in this case (particularly the CHR report) as proven by evidence properly adduced before it. The Court of Appeals and the parties may require Prosecutor Emmanuel Velasco, Jeffrey Cabintoy, Edmund Dag-uman, Melissa Concepcion Reyes, Emerito Lipio and Marlon Manuel to testify in this case.

3. ID.; ID.; ID.; ID.; A PERSON TO WHOM A WRIT IS DIRECTED, WHO MAKES A FALSE RETURN THEREOF MAY BE PUNISHED FOR CONTEMPT. — The pertinent provision of the Rules of Court on contempt, in relation to a *Habeas Corpus* proceeding, is Section 16, Rule 102, which provides: "Sec. 16. *Penalty for refusing to issue writ, or for disobeying the same.* — x x x **a person to whom a writ is directed, who** x x x **makes false return thereof** x x x **may also be punished by the court or judge as for contempt**."

4. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; CRIMINAL CONTEMPT; ANY IMPROPER CONDUCT TENDING, DIRECTLY OR INDIRECTLY, TO IMPEDE, OBSTRUCT OR DEGRADE THE ADMINISTRATION OF JUSTICE CONSTITUTES CRIMINAL CONTEMPT. — We agree with the CA that indirect contempt is the appropriate characterization of the charge filed by the petitioner against the respondents and that the charge is criminal in nature. Evidently, the charge of filing a false return constitutes improper conduct that serves no other purpose but to mislead, impede and obstruct the administration of justice by the Court. In *People v. Godoy*, which the CA cited, we specifically held that under paragraph (d) of Section 3, Rule 71 of the Rules of Court, any improper conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice constitutes criminal contempt.

5. ID.; ID.; ID.; ID.; CHARACTERIZED AS *SUI GENERIS* AS IT PARTAKES SOME OF THE ELEMENTS OF BOTH CIVIL AND CRIMINAL PROCEEDING, WITHOUT COMPLETELY FALLING UNDER EITHER PROCEEDING. — A criminal contempt proceeding has been characterized as *sui generis* as it partakes some of the elements of both a civil and criminal proceeding, without completely falling under either proceeding. Its identification with a criminal proceeding is in the use of the principles and rules applicable to criminal cases, to the extent that criminal procedure is consistent with the summary nature of a contempt proceeding. We have consistently held and established that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt; that the accused is afforded many of the protections provided in regular criminal cases; and that proceedings under statutes governing them are to be strictly construed.

6. ID.; ID.; ID.; ID.; IN PROCEEDINGS FOR CRIMINAL CONTEMPT, THE DEFENDANT IS PRESUMED INNOCENT AND THE BURDEN IS ON THE PROSECUTION TO PROVE THE CHARGES BEYOND REASONABLE DOUBT. — Contempt, too, is not presumed. In proceedings for criminal contempt, **the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt**. The presumption of innocence can be overcome only by proof of guilt beyond reasonable doubt, which means proof to the satisfaction of the court and keeping in mind the presumption of innocence *that precludes every reasonable hypothesis* except that for which it is given. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely true than the contrary. *It must establish the truth of the fact to a reasonable certainty and moral certainty* — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.

APPEARANCES OF COUNSEL

Pacifico A. Agabin and *Fernandez & Kasilag-Villanueva & Roberto M.J. Lara* for petitioner.

The Solicitor General for respondents.

Hermilio T. Barrios for LTC Jags (PA).

R E S O L U T I O N

BRION, *J.*:

We review,[1] in light of the latest developments in this case, the decision[2] dated July 17, 2008 of the Court of Appeals (*CA*) in the consolidated petitions for *Habeas Corpus*,[3] Contempt[4]

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[1] Pursuant to Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Rosalinda Asuncion-Vicente and with Associate Justices Remedios A. Salazar-Fernando and Myrna Dimaranan Vidal, concurring; *rollo*, pp. 72-119.

[3] CA-G.R. SP No. 99839.

[4] CA-G.R. SP No. 100230.

and Writ of *Amparo*[5] filed by Edita T. Burgos (*petitioner*). The assailed CA decision dismissed the petition for the issuance of the Writ of *Habeas Corpus*; denied the petitioner's motion to declare the respondents in Contempt; and partially granted the privilege of the Writ of *Amparo*.[6]

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[5] CA-G.R. SP No. 00008-WA.

[6] The dispositive portion of the CA decision reads:

WHEREFORE, based on all of the foregoing premises, judgment is hereby rendered as follows:

1. The Petition for *Habeas Corpus* in CA-G.R. SP No. 99839 and the Petition for Contempt in CA-G.R. SP No. 100230 are both **DISMISSED**.

2. The Petition for *Amparo* in CA-G.R. SP No. 00008-WA is PARTIALLY GRANTED. The privilege of the writ of *amparo* is granted as hereunder specified, *viz*:

1. Respondents Lt. Gen. Alexander Yano and Dir. Gen. Avelino Razon, Jr., are hereby **ORDERED** to make available, and provide copies to petitioner, all documents and records in their possession relevant to the case of Jonas Joseph Burgos, subject to reasonable regulations consistent with the Constitution and existing laws;

2. Respondent Commission on Human Rights, through its Chairperson, is DIRECTED to furnish petitioner documents not yet on file with this Court, pursuant to its undertaking before this Court during the hearing held on January 21, 2008;

3. Respondent Dir. Gen. Avelino Razon, Jr. is hereby **DIRECTED** to continue with, and conduct, a full and thorough investigation of the case of Jonas Joseph Burgos and to cause the immediate filing of the appropriate charges against all those who may be found responsible therefor with the Department of Justice;

4. Respondent Lt. Gen. Alexander Yano is likewise hereby **DIRECTED** (sic) conduct a thorough investigation of the circumstances surrounding the loss of license plate no. TAB 194 and the possible involvement of any AFP personnel in the alleged abduction of Jonas Joseph Burgos;

5. Respondents Lt. Gen. Yano and Dir. Gen. Razon are hereby **REQUIRED** to submit a compliance report to this Court, copy furnished the petitioner, within ten (10) days after completion of their respective organization.

Petitioner's Motion to Declare Respondents in Contempt is **DENIED** admission and ordered expunged from the records of this case.

Respondents' Manifestation and Motion dated July 1, 2008 is **NOTED**.

SO ORDERED.

On June 22, 2010, we issued a Resolution[7] referring the present case to the Commission on Human Rights (*CHR*), as the Court's directly commissioned agency tasked with the continuation of the investigation of Jonas Joseph T. Burgos' abduction and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court. We found the referral necessary as the investigation by the PNP-CIDG, by the AFP Provost Marshal, and even by the CHR had been less than complete; for one, there were very significant lapses in the handling of the investigation. In particular, we highlighted the PNP-CIDG's failure to identify the cartographic sketches of two (one male and one female) of the five abductors of Jonas, based on their interview of eyewitnesses to the abduction.[8] We held:

> Considering the findings of the CA and our review of the records of the present case, we conclude that the PNP and the AFP have so far failed to conduct an exhaustive and meaningful investigation into the disappearance of Jonas Burgos, and to exercise the extraordinary diligence (in the performance of their duties) that the Rule on the Writ of *Amparo* requires. Because of these investigative shortcomings, we cannot rule on the case until a more meaningful investigation, using extraordinary diligence, is undertaken.
>
> **From the records, we note that there are very significant lapses in the handling of the investigation** — among them the PNP-CIDG's failure to identify the cartographic sketches of two (one male and one female) of the five abductors of Jonas based on their interview of eyewitnesses to the abduction. This lapse is based on the information provided to the petitioner by no less than State Prosecutor Emmanuel Velasco of the DOJ who identified the persons who were possibly involved in the abduction, namely: T/Sgt. Jason Roxas (Philippine Army), Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo (Philippine Air Force), and an *alias* T.L., all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the AFP. No search and certification were ever made on whether these persons were AFP personnel or in other branches of the service, such as the Philippine Air Force. As testified to by the petitioner, *no significant follow through was also made*

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[7] *Supra* note 14.

[8] *Id.* at 493-495.

by the PNP-CIDG in ascertaining the identities of the cartographic sketches of two of the abductors despite the evidentiary leads provided by State Prosecutor Velasco of the DOJ. Notably, the PNP-CIDG, as the lead investigating agency in the present case, did not appear to have lifted a finger to pursue these aspects of the case.

We note, too, that no independent investigation appeared to have been made by the PNP-CIDG to inquire into the veracity of Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and a certain @KA ENSO of the CPP/NPA guerilla unit RYG. The records do not indicate whether the PNP-CIDG conducted a follow-up investigation to determine the identities and whereabouts of @KA Dante and @KA ENSO. These omissions were aggravated by the CA finding that the PNP has yet to refer any case for preliminary investigation to the DOJ despite its representation before the CA that it had forwarded all pertinent and relevant documents to the DOJ for the filing of appropriate charges against @KA DANTE and @KA ENSO.

…While significant leads have been provided to investigators, the investigations by the PNP-CIDG, the AFP Provost Marshal, and even the Commission on Human Rights (*CHR*) have been less than complete. The PNP-CIDG's investigation particularly leaves much to be desired in terms of the extraordinary diligence that the Rule on the Writ of *Amparo* requires.

Following the CHR's legal mandate, we gave the Commission the following specific directives:[9]

(a) ascertaining the identities of the persons appearing in the cartographic sketches of the two alleged abductors as well as their whereabouts;

(b) determining based on records, past and present, the identities and locations of the persons identified by State Prosecutor Velasco alleged to be involved in the abduction of Jonas, namely: T/Sgt. Jason Roxas (Philippine Army); Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo (Philippine Air Force), and an *alias* T.L., all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the AFP; further proceedings and investigations, as may be necessary, should be made to pursue the

[9] *Id.* at 496-498.

lead allegedly provided by State Prosecutor Velasco on the identities of the possible abductors;

(c) inquiring into the veracity of Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and @KA ENSO of the CPP/NPA guerilla unit RYG;

(d) determining based on records, past and present, as well as further investigation, the identities and whereabouts of @KA DANTE and @KA ENSO; and

(e) undertaking all measures, in the investigation of the Burgos abduction, that may be necessary to live up to the extraordinary measures we require in addressing an enforced disappearance under the Rule on the Writ of *Amparo*.

In this same Resolution, we also affirmed the CA's dismissal of the petitions for Contempt and for the issuance of a Writ of *Amparo* with respect to President Macapagal-Arroyo, as she is entitled as President to immunity from suit.[10]

On March 15, 2011, the CHR submitted to the Court its *Investigation Report on the Enforced Disappearance of Jonas Burgos* (*CHR Report*), in compliance with our June 22, 2010 Resolution.[11] In this Report, the CHR recounted the investigations undertaken, whose pertinent details we quote below:

On June 26, 2010, the CHR issued Resolution CHR IV No. A2010-100 to intensify the investigation of the case of the Burgos enforced disappearance; and for this purpose, created a Special Investigation Team…headed by Commissioner Jose Manuel S. Mamauag.

x x x x x x x x x

In compliance with the directive mentioned in the above-quoted *En Banc* Resolution of the Supreme Court, the *Team* conducted field investigations by: (1) interviewing a) civilian authorities involved in the first investigation of the instant case; b) military men under detention for alleged violations of Articles of War; c) Security Officers of Ever Gotesco Mall, Commonwealth Avenue, Quezon City; d) two (2) of the three (3) CIDG witnesses; e) two (2) eyewitnesses who

[10] *Id.* at 498.

[11] *Rollo*, pp. 769-897.

described to the police sketch artist two (2) faces of a male and female abductors of Jonas Burgos; f) Rebel-Returnees (RRs); g) officers and men in the military and police service; h) local officials and other government functionaries; and i) ordinary citizens; (2) inquiring into the veracity of CIDG witnesses Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and @KA ENSO of the CPP/NPA guerilla unit RYG; (3) securing case records from the prosecution service and courts of law; (4) visiting military and police units. Offices, camps, detention centers, and jails and requesting copies of documents and records in their possession that are relevant to the instant case; (5) searching for and interviewing witnesses and informants; and (6) pursuing leads provided by them.

S. *Email's "Star-Struck"*

38. Pursuing the lead mentioned in the anonymous e-mail, which was attached to the Burgos petition as Exhibit "J", "*that the team leader (T.L.) in the Jonas Burgos abduction was a certain Army Captain, (promotable to Major), a good looking guy (tisoy), and a potential showbiz personality known otherwise as Captain Star-struck*," the *Team* requested the CHR Clearance Section, Legal Division for any information leading to T.L. or to all Philippine Army applicants for CHR clearance whose ranks are Captains or Majors promoted during the years 2007 to 2009.

39. Sometime in November 2010, the *Team* was able to track down one CHR clearance-applicant who most likely possesses and/or matches the information provided in the said lead. But when his photo/picture was presented to the eyewitnesses, they failed to identify him.

40. Undaunted with the negative identification, the *Team* suspected that the "team leader" might not have participated in the actual abduction inside *Hapag Kainan Restaurant*, the scene of the crime, but most probably was in one of the "three cars" allegedly used during the operation while giving orders or commanding the actual abductors.

41. In relation to the above suspicion, the *Team* has theorized that officers below the rank of Captain might have perpetrated the actual abduction.

42. The *Team* explored this possibility and focused its attention on the officers of the 7th ID, PA, namely: Lt. Vicente O. Dagdag, Jr., the S-4 of 65 IB who executed an affidavit relative to the alleged stolen Plate No. TAB-194; 2Lt. Rey B. Dequito of 56th IB, the witness

against Edmond Dag-Uamn for the alleged crime of murder; and 1Lt. Usmalik Tayaban, the Team Leader with the 56th IB who issued a Custody Receipt in connection with the Petition for *Habeas Corpus* filed in Angeles City relative to the 2006 Emerito Lipio abduction case against the police and military personnel.

T. *Face-book account*

43. Google search of the names of the above mentioned individuals yielded negative result except for 1Lt. Usmalik Tayaban, whose name was connected to a social networking site, the Face-book account of PMA BATCH SANGHAYA 2000.

44. In the Facebook account Sanghaya, the contents of which is categorized as "PUBLIC" or open to public viewing, it appears that "Malik" Tayaban is a graduate of the Philippine Military Academy (PMA) Batch Sanghaya of 2000. Other leads were also discovered, such as the following: vernacular description of "*tisoy*" which was mentioned by one of the users in the "*comment portion*" of the account which incidentally was also mentioned in the anonymous e-mail as the "*team leader*" (T.L.); the picture of a man sporting a "*back-pack*," which was also mentioned by witness Elsa. Per Elsa's account, the person in the cartographic sketch was wearing a "*back-pack*."

45. Aware of the intricacies of the above-mentioned leads, the *Team* caused the reproduction of all pictures in the Facebook account for future reference; and requested the NBI (Burgos) Team for a copy of the PMA Sanghaya Batch 2000 Year Book, also for future reference.

U. *The PMA Year Book*

46. Through the efforts of the NBI (Burgos) Team, the *Team* was able to get the PMA Year Book of Sanghaya Batch 2000 and the location of one important eyewitness in the abduction.

V. *JEFFREY CABINTOY*

47. On December 1, 2010, the *Team* together with the NBI Team were able to locate Jeffrey Cabintoy (Jeffrey), one of the two (2) eyewitnesses who provided the police cartographic artist with the description of two (2) principal abductors of Jonas Burgos. Jeffrey narrated in details (sic) the circumstances that happened before and during the abduction.

48. On December 7, 2010, the *Team* and Jeffrey went to the place of incident at Ever Gotesco Mall, Quezon City to refresh his memory and re-enact what transpired. In the afternoon of the same date, the *Team* invited Jeffrey to the CHR Central Office in Quezon City, where he was shown for identification twenty (20) copies of colored photographs/pictures of men and the almost two hundred forty-four (244) photographs/pictures stored in the computer and lifted from the profiles of the Philippine Military Academy Year Book of Batch Sanghaya 2000.

49. Jeffrey pointed to a man in the two (2) colored group pictures/ photographs, that he identified as among the 8-man group who abducted Jonas Burgos. For record and identification purposes, the *Team* encircled the face that Jeffrey identified in the two pictures; then he affixed his signature on each picture. Also, while leafing through the pictures of the PMA graduates in the Year Book of Sanghaya 2000 Batch, the witness identified a picture, with a bold and all-capitalized name HARRY AGAGEN BALIAGA JR and the words Agawa, Besao, Mt. Province printed there under the capitalized words PHILIPPINE ARMY written on the upper portion, as the same person he pointed out in the two group pictures just mentioned above. Immediately thereafter, the *Team* caused the production of the photo identified by Jeffrey and asked him to affix his signature, which he also did.

50. After examining each of these pictures, Jeffrey declared that it dawned on him that based on his recollection of faces involved in the abduction of Jonas Burgos, he now remembers the face of a man, other than the two (2) faces whose description he already provided before to a police sketch artist, who was part of the 8-man group of abductors. And he also confirms it now that the person he is referring to was indeed seen by him as one of those who abducted Jonas Burgos at Hapag Kainan Restaurant of Ever Gotesco Mall, Commonwealth Avenue, Quezon City.

51. When asked how certain he was of the person he identified, considering that the printed copy of the photo lifted from the Facebook Sanghaya Account was taken sometime in the year 2010; while the picture appearing in the computer was lifted from the PMA Sanghaya 2000 Batch Year Book, Jeffrey replied "*Ang taong ito ay aking natatandaan sa kadahilanan na nuong una siya ay nakaupo na katabi sa bandang kaliwa nang taong dumukot at natapos silang mag usap lumapit sa akin at pilit akong pinipigilan na wag daw makialam at ang sabi nya sa akin ay "WAG KA DITONG*

MAKIALAM KASI ANG TAONG ITO AY MATAGAL NA NAMING SINUSUBAYBAYAN DAHIL SA DROGA" kahit pa halos nagmamakaawa na nang tulong ang taong dinukot; at matapos nuon ay sapilitan na nilang binitbit sa labas ang biktima." (I remember this man for the reason that at first he was seated at the left side of the person abducted; and after they talked, he approached me and was preventing me forcefully saying not to interfere and he said to me: "DON'T YOU INTERFERE HERE SINCE WE HAVE BEEN DOING SOME SURVEILLANCE ON THIS MAN FOR SOME TIME ALREADY BECAUSE OF DRUGS" despite that the man was already pleading for help, and after that, they forcibly dragged the victim outside.)

52. When asked if he could identify the picture of Jonas Burgos, Jeffrey affirmed that the person in the picture is the person referred to by him as the victim of abduction and his name is Jonas Burgos. He further stated that he learned of the victim's name when he saw his picture flashed on TV and hear his name. When asked if he is willing to execute an affidavit on the facts that he has just provided, he answered yes and at that juncture the *Team* assisted him in the preparation of his "*Sinumpaang Salaysay*" based on his personal knowledge and in a language known to him. After which, the *Team* asked Jeffrey to read, examine and determine whether all the information he just provided are reflected in his "*Sinumpaang Salaysay*" and Jeffrey answered yes. Thereafter, Jeffrey affixed his signature after being sworn to before a lady CHR lawyer and a duly commissioned Notary Public for and in Quezon City.

W. *Daguman confirmed Tayaban's and Baliaga's actual affiliation with the military and their assignment at the 56th Infantry Battalion, 7th ID.*

53. On December 10, 2010, the *Team* went to the Bulacan Provincial Jail to visit Edmond Dag-Uman and asked him to identify his former Company Commander at the 56th IB, 71 ID, Lt. Usmalik Tayaban and to identify the pictures.

54. Edmond Dag-uman identified the encircled in the picture as LT. HARRY A. BALIAGA, JR., and the man with a receding hair as LT. USMALIK TAYABAN, his former Company Commander.

55. When asked if he was willing to reduce in writing his precious statements and those that just mentioned, he replied "*BAKA MAPAHAMAK AKO NYAN*! (*That might endanger me!*). Following a lengthy discussion on the pros and cons of executing a sworn

statement and the assurance of the Team to exclude his statements that are critical to the military establishment, it dawned on Daguman that his statement would be of help to the Commission in bringing his case to the proper authorities for review and appropriate action, that he eventually expressed his willingness to do so.

56. After which the *Team* immediately went to a "*Computer Café*" nearby to encode the "*Salaysay,*" then the printed copy was presented to him for his determination whether he is in full accord with the contents therein. Edmond spent about thirty (30) minutes reading it and changed the word "*Charlie*" to "*Bravo*" and then affixed his initial on it. He also signed the "*Sinumpaang Salaysay*" after being sworn to before a team member authorized to administer oath.

X. *Second visit to ELSA AGASANG and her Supplemental Sworn Statement*

57. On January 26, 2011, the *Team* along with witness Jeffrey went to Bicol to meet witness Elsa. The aim was to help Elsa recall the faces of those she saw in the abduction by showing to her recently-acquired pictures of suspects.

58. For the first time they would re-unite, after almost four years since that fateful day of April 28, 2007, when both of them had the experience of witnessing an abduction incident, which rendered them jobless and unsafe.

59. The *Team* told Jeffrey to sit in front of Elsa without introducing him to her. After about half an hour into the conversation, she expressed disbelief when she realized that she was facing in person (sic) he co-worker that she knew very well.

60. On January 29, 2011, Elsa executed her Karagdagang Sinumpaang Salaysay affirming her Salaysay given before PCI Lino DL Banaag at the CIDU, Quezon City Police District Office, Camp Karingal, Quezon City; and corroborating the material allegations contained in the *Sinumpaang Salaysay* of Jeffrey.

On the basis of the evidence it had gathered, the CHR submitted the following findings:[12]

Based on the facts developed by evidence obtaining in this case, **the CHR finds that the enforced disappearance of Jonas Joseph**

[12] *Id.* at 808-812.

T. Burgos had transpired; and that his constitutional rights to life liberty and security were violated by the Government have been fully determined.

Jeffrey Cabintoy and Elsa Agasang have witnessed on that fateful day of April 28, 2007 the forcible abduction of Jonas Burgos by a group of about seven (7) men and a woman from the extension portion of Hapag Kainan Restaurant, located at the ground floor of Ever Gotesco Mall, Commonwealth Avenue, Quezon City.

x x x x x x x x x

The eyewitnesses mentioned above were **Jeffrey Cabintoy (Jeffrey)** and Elsa Agasang (Elsa), who at the time of the abduction were working as **busboy** and Trainee-Supervisor, respectively, at Hapag Kainan Restaurant.

In his Sinumpaang Salaysay, Jeffrey had a clear recollection of the face of HARRY AGAGEN BALIAGA, JR. as one of the principal abductors, apart from the faces of the two abductors in the cartographic sketches that he described to the police, after he was shown by the *Team* the pictures in the PMA Year Book of Batch Sanghaya 2000 and group pictures of men taken some years thereafter.

The same group of pictures were shown to detained former 56th IB Army trooper Edmond M. Dag-uman (Dag-uman), who also positively identified Lt. Harry Baliaga, Jr. Daguman's *Sinumpaang Salaysay* states that he came to know Lt. Baliaga as a Company Commander in the 56th IB while he was still in the military service (with Serial No. 800693, from 1997 to 2002) also with the 56th IB but under 1Lt. Usmalik Tayaban, the Commander of Bravo Company. When he was arrested and brought to the 56th IB Camp in April 2005, he did not see Lt. Baliaga anymore at the said camp. The similar reaction that the pictures elicited from both Jeffrey and Daguman did not pass unnoticed by the *Team*. Both men always look pensive, probably because of the pathetic plight they are in right now. It came as a surprise therefore to the *Team* when they could hardly hide their smile upon seeing the face of Baliaga, as if they know the man very well.

Moreover, when the *Team* asked how Jeffrey how certain was he that it was indeed Baliaga that he saw as among those who actually participated in Jonas' abduction, Jeffrey was able to give a graphic description and spontaneously, to boot, the blow by blow account of the incident, including the initial positioning of the actors, specially

Baliaga, who even approached, talked to, and prevented him from interfering in their criminal act.

A Rebel-returnee (RR) named Maria Vita Lozada *y* Villegas @KA MY, has identified the face of the female in the cartographic sketch as a certain Lt. Fernando. While Lozada refuses to include her identification of Lt. Fernando in her *Sinumpaang Salaysay* for fear of a backlash, she told the Team that she was certain it was Lt. Fernando in the cartographic sketch since both of them were involved in counter-insurgency operations at the 56th IB, while she was under the care of the battalion from March 2006 until she left the 56th IB Headquarters in October 2007. Lozada's involvement in counter-insurgency operations together with Lt. Fernando was among the facts gathered by the CHR Regional Office 3 Investigators, whose investigation into the enforced disappearance of Jonas Joseph Burgos was documented by way of an After Mission Report dated August 13, 2008.

Most if not all the actual abductors would have been identified had it not been for what is otherwise called as *evidentiary difficulties* shamelessly put up by some police and military elites. The deliberate refusal of TJAG Roa to provide the CHR with the requested documents does not only defy the Supreme Court directive to the AFP but *ipso facto* created a disputable presumption that AFP personnel were responsible for the abduction and that their superiors would be found accountable, if not responsible, for the crime committed. This observation finds support in the disputable presumption "*That evidence willfully suppressed would be adverse if produced.*" (Paragraph (e), Section 3, Rule 131 on Burden of Proof and Presumptions, Revised Rules on Evidence of the Rules of Court of the Philippines).

In saying that the requested document is irrelevant, the *Team* has deemed that the requested documents and profiles would help ascertain the true identities of the cartographic sketches of two abductors because a certain Virgilio Eustaquio has claimed that one of the intelligence operatives involved in the 2007 ERAP 5 case fits the description of his abductor.

As regards the PNP CIDG, the positive identification of former 56th IB officer Lt. HARRY A. BALIAGA, JR. as one of the principal abductors has effectively crushed the theory of the CIDG witnesses that the NPAs abducted Jonas. Baliaga's true identity and affiliation with the military have been established by

overwhelming evidence corroborated by detained former Army trooper Dag-uman.

For lack of material time, the Commission will continue to investigate the enforced disappearance of Jonas Burgos as an independent body and pursuant to its mandate under the 1987 Constitution. Of particular importance are the identities and locations of the persons appearing in the cartographic sketches; the allegations that CIDG Witnesses Emerito G. Lipio and Meliza Concepcion-Reyes are AFP enlisted personnel and the alleged participation of Delfin De Guzman @ Ka Baste in the abduction of Jonas Burgos whose case for Murder and Attempted Murder was dismissed by the court for failure of the lone witness, an army man of the 56th IB to testify against him.

Interview with Virgilio Eustaquio, Chairman of the Union Masses for Democracy and Justice (UMDJ), revealed that the male abductor of Jonas Burgos appearing in the cartographic sketch was among the raiders who abducted him and four others, identified as Jim Cabauatan, Jose Curament, Ruben Dionisio and Dennis Ibona otherwise known as ERAP FIVE.

Unfortunately, and as already pointed out above, The Judge Advocate General (TJAG) turned down the request of the Team for a profile of the operatives in the so-called "*Erap 5*" abduction on the ground of relevancy and branded the request as a fishing expedition per its Disposition Form dated September 21, 2010.

Efforts to contact Virgilio Eustaquio to secure his affidavit proved futile, as his present whereabouts cannot be determined. And due to lack of material time, the Commission decided to pursue the same and determine the whereabouts of the other members of the "*Erap 5*" on its own time and authority as an independent body.

Based on the above-cited findings, the CHR submitted the following recommendations for the Court's consideration, *viz*:[13]

i. To **DIRECT** the Department of Justice (DOJ), subject to certain requirements, to immediately admit witnesses Jeffrey T. Cabintoy and Elsa B. Agasang to the Witness Protection, Security and Benefit Program under Republic Act No. 6981;

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[13] *Id.* at 812-815.

ii. To **DIRECT** the Department of Justice (DOJ) to commence the filing of Criminal Charges for *Kidnapping/Enforced Disappearance and/or Arbitrary Detention* against 1LT. HARRY AGAGEN BALIAGA, JR. of the Philippine Army, as Principal by Direct Participation in the abduction of Jonas Joseph T. Burgos on April 28, 2007 from Ever Gotesco Mall, Commonwealth Avenue, Quezon City;

iii. To **DIRECT** the Department of Justice to cause the filing of *Obstruction of Justice* against Emerito Lipio *y* Gonzales; Marlon Manuel *y* de Leon; and Meliza Concepcion-Reyes for giving false or fabricated information to the CIDG and for their willful refusal to cooperate with the *CHR Team* in the investigation of the herein enforced disappearance;

iv. To **DIRECT** Cavite Provincial Prosecutor Emmanuel Velasco to appear before the Supreme Court and to divulge his source/ informant as the same does not fall under the privilege communication rule;

v. To **DIRECT** the PNP-CIDG RC, NCRCIDU, Atty. Joel Napoleon M. Coronel, to explain his Memorandum to the CIDG-CIDD stating that "*the witnesses were reportedly turned over by the Bulacan PPO and Philippine Army to the CIDG for investigation…,*" considering that said witnesses were not under police or military custody at the time of the supposed turn-over in the evening of August 22, 2007 and to identify the PNP officer who directed the CIDG operatives to fetch Emerito G. Lipio in Bulacan and the two other CIDG witnesses for tactical interrogation;

vi. To **REQUIRE** General Roa of the Judge Advocate General Office, AFP, and the Deputy Chief of Staff for Personnel, JI, AFP, to explain their failure and/or refusal to provide the CHR with copies of documents relevant to the case of Jonas T. Burgos, particularly the following: **(a)** Profile and *Summary of Information* and pictures of T/Sgt. *Jason Roxas* (Philippine Army) and three (3) other enlisted personnel mentioned in paragraph (1) of the dispositive portion of the Supreme Court *En Banc* Resolution issued on 22 June 2010 in the instant consolidated cases, including a certain *2Lt. Fernando*, a lady officer involved in the counter-insurgency operations of the 56th IB in 2006 to 2007; **(b)** copies of the records of the 2007 *ERAP 5* incident in Kamuning, Quezon City and the complete list of the intelligence operatives involved in that said covert military operation, including their respective *Summary of Information* and

individual pictures; and **(c)** complete list of the *officers, women* and *men* assigned at the 56th and 69th Infantry Battalion and the 7th Infantry Division from January 1, 2004 to June 30, 2007 with their respective profiles, Summary of Information and pictures; including the list of captured rebels and rebels who surrendered to the said camps and their corresponding pictures and copies of their Tactical Interrogation Reports and the cases filed against them, if any;

vii. To **DIRECT** the PNP-CIDG to comply with its mandate under paragraph (3) of the dispositive portion of the Supreme Court *En Banc* Resolution promulgated on 22 June 2010 in the instant consolidated cases;

viii.To **DIRECT** Harry A. Baliaga, Jr., the Philippine Army's 56th Infantry Battalion in Bulacan and 7th Infantry Division at Fort Magsaysay in Laur, Nueva Ecija to produce the living body of the victim Jonas Joseph T. Burgos before this Court;

ix. To **DIRECT** the Department of Justice to review and determine the probable liability/accountability of the officers and enlisted personnel concerned of the Philippine Army's 56th IB and the 7th ID, relative to the torture and/or other forms of ill-treatment of Edmond M. Dag-uman, while he was in detention at Fort Magsaysay sometime in October 2005, as part of the collateral discoveries in the conduct of this investigation;

x. To **DIRECT** the Department of Justice to review the case filed against Edmond Dag-uman *alias DELFIN DE GUZMAN* with the Regional Trial Court Branch 10 in Malolos City docketed as Criminal Case Nos. 1844-M-2005 and 186-M-2006; and the legal basis, if any, for his continued detention at the Bulacan Provincial Jail in Malolos City; and

xi. To **DIRECT** the Department of Interior and Local Government (DILG) to study the probable liability of Adelio A. Asuncion, former Jail Warden of Bulacan Provincial Jail for his failure to account the records of the inmates more specifically the records of turn-over *Edmond* Dag-uman from the 7th ID.

Pursuant to our June 22, 2010, the CHR furnished the petitioner with the copy of its report, which the petitioner apparently relied

upon in filing a criminal complaint against Lt. Harry A. Baliaga, Jr. and other members of the military.[14]

OUR RULING

A. Amparo

After reviewing the evidence in the present case, the CA findings and our findings in our June 22, 2010 Resolution heretofore mentioned, including the recent CHR findings that Lt. Harry A. Baliaga, Jr., (*Lt. Baliaga*) of the 56th Infantry Battalion, 7th Infantry Division, Philippine Army is one of the abductors of Jonas, we resolve to hold in abeyance our ruling on the merits in the *Amparo* aspect of the present case and refer this case back to the CA in order to allow Lt. Baliaga and the present *Amparo* respondents to file their respective Comments on the CHR Report within a non-extendible period of fifteen (15) days from receipt of this Resolution. The CA shall continue with the hearing of the *Amparo* petition in light of the evidence previously submitted, the proceedings it already conducted and the subsequent developments in this case, particularly the CHR Report. Thereafter, the CA shall rule on the merits of the *Amparo* petition. For this purpose, we order that Lt. Baliaga be impleaded as a party to the *Amparo* petition (CA-G.R. SP No. 00008-WA). This directive to implead Lt. Baliaga is without prejudice to similar directives we may issue with respect to others whose identities and participation may be disclosed in future investigations.

We also note that the Office of the Judge Advocate General (*TJAG*) failed and/or refused to provide the CHR with copies of documents relevant to the case of Jonas, and thereby disobeyed our June 22, 2010 Resolution. To recall, we issued a Resolution declaring the CHR as the Court's directly commissioned agency tasked with the continuation of the investigation of Jonas' abduction

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[14] On June 9, 2011, Edita Burgos filed a criminal complaint before the Department of Justice against Major Harry Baliaga Jr., Lieutenant Colonel Melquaides Feliciano, Col. Eduardo Ano and several unidentified soldiers (http://newsinfo.inquirer.net/13553/burgos%E2%80%99-mom-supporters-file-criminal-raps-vs-military-officers).

and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court. In this same Resolution, we required the *then incumbent* Chiefs of the AFP and the PNP to make available and to provide copies to the CHR, of all documents and records in their possession and as the CHR may require, *relevant* to the case of Jonas, subject to reasonable regulations consistent with the Constitution and existing laws.

In its March 15, 2011 Report, the CHR recommended, for the Court's consideration:[15]

> vi. To **REQUIRE** General Roa of the Judge Advocate General Office, AFP, and the Deputy Chief of Staff for Personnel, JI, AFP, to explain their failure and/or refusal to provide the CHR with copies of documents relevant to the case of Jonas T. Burgos, particularly the following: **(a)** Profile and *Summary of Information* and pictures of T/Sgt. *Jason Roxas* (Philippine Army) and three (3) other enlisted personnel mentioned in paragraph (1) of the dispositive portion of the Supreme Court *En Banc* Resolution issued on 22 June 2010 in the instant consolidated cases, including a certain *2Lt. Fernando*, a lady officer involved in the counter-insurgency operations of the 56th IB in 2006 to 2007; **(b)** copies of the records of the 2007 *ERAP 5* incident in Kamuning, Quezon City and the complete list of the intelligence operatives involved in that said covert military operation, including their respective *Summary of Information* and individual pictures; and **(c)** complete list of the *officers, women* and *men* assigned at the 56th and 69th Infantry Battalion and the 7th Infantry Division from January 1, 2004 to June 30, 2007 with their respective profiles, Summary of Information and pictures; including the list of captured rebels and rebels who surrendered to the said camps and their corresponding pictures and copies of their Tactical Interrogation Reports and the cases filed against them, if any.

Section 16 of the Rule on the Writ of *Amparo* provides that any person who otherwise disobeys or resists a lawful process or order of the court may be punished for contempt, *viz*:

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[15] *Rollo*, pp. 813-814.

SEC. 16. Contempt. — The court, justice or judge may order the respondent who refuses to make a return, or who makes a false return, or any person who otherwise disobeys or resists a lawful process or order of the court to be punished for contempt. The contemnor may be imprisoned or imposed a fine.

Acting on the CHR's recommendation and based on the above considerations, we resolve to require General Roa of TJAG, AFP, and the Deputy Chief of Staff for Personnel, JI, AFP, *at the time of our June 22, 2010 Resolution,* and then incumbent Chief of Staff, AFP,[16] to show cause and explain, within a non-extendible period of fifteen (15) days from receipt of this Resolution, why they should not be held in contempt of this Court for defying our June 22, 2010 Resolution.

B. Habeas Corpus

In light of the new evidence obtained by the CHR, particularly the Cabintoy evidence that positively identified Lt. Baliaga as one of the direct perpetrators in the abduction of Jonas and in the interest of justice, we resolve to set aside the CA's dismissal of the *habeas corpus* petition and issue anew the writ of *habeas corpus* returnable to the Presiding Justice of the CA who shall immediately refer the writ to the same CA division that decided the *habeas corpus* petition (CA-GR SP No. 99839).

For this purpose, we also order that Lt. Baliaga be impleaded as a party to the *habeas corpus* petition and require him — together with the incumbent Chief of Staff, AFP; the incumbent Commanding General, Philippine Army; and the Commanding Officer of the 56th IB at the time of the disappearance of Jonas, Lt. Col. Feliciano — to produce the person of Jonas and to show cause why he should not be released from detention.

The CA shall rule on the merits of the *habeas corpus* petition in light of the evidence previously submitted to it, the proceedings already conducted, and the subsequent developments in this case

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[16] Gen. Hermogenes Esperon retired on February 9, 2008; Gen. Ricardo David was the incumbent Chief of Staff, AFP at the time we issued our June 22, 2010 Resolution.

(particularly the CHR report) as proven by evidence properly adduced before it. The Court of Appeals and the parties may require Prosecutor Emmanuel Velasco, Jeffrey Cabintoy, Edmund Dag-uman, Melissa Concepcion Reyes, Emerito Lipio and Marlon Manuel to testify in this case.

C. Petition for Contempt

In dismissing the petition, the CA held:[17]

> Undoubtedly, the accusation against respondents is criminal in nature. In view thereof, the rules in criminal prosecution and corollary recognition of respondents' constitutional rights inevitably come into play. As held in *People v. Godoy*:
>
> > In proceedings for criminal contempt, the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt.
>
> Hence, assuming that there is circumstantial evidence to support petitioner's allegations, said circumstantial evidence falls short of the quantum of evidence that is required to establish the guilt of an accused in a criminal proceeding, which is proof beyond reasonable doubt.

The pertinent provision of the Rules of Court on contempt, in relation to a *Habeas Corpus* proceeding, is Section 16, Rule 102, which provides:

> Sec. 16. *Penalty for refusing to issue writ, or for disobeying the same*. — A clerk of a court who refuses to issue the writ after allowance thereof and demand therefor, **or a person to whom a writ is directed**, **who** neglects or refuses to obey or make return of the same according to the command thereof, or **makes false return thereof,** or who, upon demand made by or on behalf of the prisoner, refuses to deliver to the person demanding, within six (6) hours after the demand therefor, a true copy of the warrant or order of commitment, shall forfeit to the party aggrieved the sum of one thousand pesos, to be recovered in a proper action, and **may also be punished by the court or judge as for contempt**. [emphasis supplied]

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[17] *Rollo*, pp. 104-106.

In *Montenegro v. Montenegro*,[18] we explained the types and nature of contempt, as follows:

> Contempt of court involves the doing of an act, or the failure to do an act, in such a manner as to create an affront to the court and the sovereign dignity with which it is clothed. It is defined as "disobedience to the court by acting in opposition to its authority, justice and dignity."[7] The power to punish contempt is inherent in all courts, because it is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, orders and mandates of the courts; and, consequently, to the due administration of justice.
>
> x x x x x x x x x
>
> Contempt, whether direct or indirect, **may be civil or criminal** depending on the nature and effect of the contemptuous act. **Criminal contempt is "conduct directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect."** On the other hand, civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore, an offense against the party in whose behalf the violated order was made**. If the purpose is to punish, then it is criminal in nature; but if to compensate, then it is civil.** [emphasis supplied]

We agree with the CA that indirect contempt is the appropriate characterization of the charge filed by the petitioner against the respondents and that the charge is criminal in nature. Evidently, the charge of filing a false return constitutes improper conduct that serves no other purpose but to mislead, impede and obstruct the administration of justice by the Court. In *People v. Godoy*,[19] which the CA cited, we specifically held that under paragraph (d) of Section 3, Rule 71 of the Rules of Court, any improper conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice constitutes criminal contempt.

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[18] G.R. No. 156829, June 8, 2004, 431 SCRA 415, 423-425.

[19] G.R. Nos. 115908-09, March 29, 1995, 243 SCRA 64, 80.

A criminal contempt proceeding has been characterized as *sui generis* as it partakes some of the elements of both a civil and criminal proceeding, without completely falling under either proceeding. Its identification with a criminal proceeding is in the use of the principles and rules applicable to criminal cases, to the extent that criminal procedure is consistent with the summary nature of a contempt proceeding. We have consistently held and established that the strict rules that govern criminal prosecutions apply to a prosecution for criminal contempt; that the accused is afforded many of the protections provided in regular criminal cases; and that proceedings under statutes governing them are to be strictly construed.[20]

Contempt, too, is not presumed. In proceedings for criminal contempt, **the defendant is presumed innocent and the burden is on the prosecution to prove the charges beyond reasonable doubt**.[21] The presumption of innocence can be overcome only by proof of guilt beyond reasonable doubt, which means proof to the satisfaction of the court and keeping in mind the presumption of innocence *that precludes every reasonable hypothesis* except that for which it is given. It is not sufficient for the proof to establish a probability, even though strong, that the fact charged is more likely true than the contrary. *It must establish the truth of the fact to a reasonable certainty and moral certainty* — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.[22]

For the petitioner to succeed in her petition to declare the respondents in contempt for filing false returns in the *habeas corpus* proceedings before the CA, she has the burden of proving beyond reasonable doubt that the respondents had custody of Jonas. As the CA did, we find that the pieces of evidence on record *as of the time of the CA proceedings* were merely circumstantial and did not provide a direct link between the

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[20] *Id.* at 78-79.

[21] *Id.* at 80.

[22] *People v. Castillo*, G.R. No. 132895, March 10, 2004, 425 SCRA 136, 166, citing *United States v. Reyes*, 3 Phil. 6 (1903).

respondents and the abduction of Jonas; the evidence did not prove beyond reasonable doubt that the respondents had a hand in the abduction of Jonas, and consequently, had custody of him at the time they filed their returns to the Writ of *habeas corpus* denying custody of Jonas.

However, the subsequent developments in this case, specifically, the investigative findings presented to us by the CHR pointing to Lt. Baliaga as one of the abductors of Jonas, have given a twist to our otherwise clear conclusion. Investigations will continue, consistent with the nature of *Amparo* proceedings to be alive until a definitive result is achieved, and these investigations may yet yield additional evidence affecting the conclusion the CA made. For this reason, we can only conclude that the CA's dismissal of the contempt charge should be provisional, *i.e.*, without prejudice to the re-filing of the charge in the future should the petitioner find this step warranted by the evidence in the proceedings related to Jonas's disappearance, including the criminal prosecutions that may transpire.

To adjust to the extraordinary nature of *Amparo* and *habeas corpus* proceedings and to directly identify the parties bound by these proceedings who have the continuing obligation to comply with our directives, the AFP Chief of Staff, the Commanding General of the Philippine Army, the Director General of the PNP, the Chief of the PNP-CIDG and the TJAG shall be named as parties to this case without need of naming their current incumbents, separately from the then incumbent officials that the petitioner named in her original *Amparo* and *habeas corpus* petitions, for possible responsibility and accountability.

In light of the dismissal of the petitions against President Gloria Macapagal-Arroyo who is no the longer the President of the Republic of the Philippines, she should now be dropped as a party-respondent in these petitions.

WHEREFORE, in the interest of justice and for the foregoing reasons, we *RESOLVE* to:

I. IN G.R. NO. 183711 (HABEAS CORPUS PETITION, CA-G.R. SP No. 99839)

a. **ISSUE** a Writ of *Habeas Corpus* anew, returnable to the Presiding Justice of the Court of Appeals who shall immediately refer the writ to the same Division that decided the *habeas corpus* petition;

b. **ORDER** Lt. Harry A. Baliaga, Jr. impleaded in CA-G.R. SP No. 99839 and G.R. No. 183711, and **REQUIRE** him, together with the incumbent Chief of Staff, Armed Forces of the Philippines; the incumbent Commanding General, Philippine Army; and the Commanding Officer of the 56th IB, 7th Infantry Division, Philippine Army at the time of the disappearance of Jonas Joseph T. Burgos, Lt. Col. Melquiades Feliciano, to produce the person of Jonas Joseph T. Burgos under the terms the Court of Appeals shall prescribe, and to show cause why Jonas Joseph T. Burgos should not be released from detention;

c. **REFER** back the petition for *habeas corpus* to the same Division of the Court of Appeals which shall continue to hear this case after the required Returns shall have been filed and render a new decision within thirty (30) days after the case is submitted for decision; and

d. **ORDER** the Chief of Staff of the Armed Forces of the Philippines and the Commanding General of the Philippine Army to be impleaded as parties, separate from the original respondents impleaded in the petition, and the dropping or deletion of President Gloria Macapagal-Arroyo as party-respondent.

II. IN G.R. NO. 183712 (*CONTEMPT OF COURT CHARGE, CA-G.R. SP No. 100230*)

e. **AFFIRM** the dismissal of the petitioner's petition for Contempt in CA-G.R. SP No. 100230, without prejudice to the re-filing of the contempt charge as may be warranted by the results of the subsequent CHR investigation this Court has ordered; and

f. **ORDER** the dropping or deletion of former President Gloria Macapagal-Arroyo as party-respondent, in light of the unconditional dismissal of the contempt charge against her.

III. IN G.R. NO. 183713 (*WRIT OF AMPARO PETITION, CA-G.R. SP No. 00008-WA*)

g. **ORDER** Lt. Harry A. Baliaga, Jr., impleaded in CA-G.R. SP No. 00008-WA and G.R. No. 183713, without prejudice to similar directives we may issue with respect to others whose identities and participation may be disclosed in future investigations and proceedings;

h. **DIRECT** Lt. Harry A. Baliaga, Jr., and the present *Amparo* respondents to file their Comments on the CHR report with the Court of Appeals, within a non-extendible period of fifteen (15) days from receipt of this Resolution.

i. **REQUIRE** General Roa of the Office of the Judge Advocate General, AFP; the Deputy Chief of Staff for Personnel, JI, AFP, *at the time of our June 22, 2010 Resolution;* and then Chief of Staff, AFP, Gen. Ricardo David, (a) to show cause and explain to this Court, within a non-extendible period of fifteen (15) days from receipt of this Resolution, why they should not be held in contempt of this Court for their defiance of our June 22, 2010 Resolution; and (b) to submit to this Court, within a non-extendible period of fifteen (15) days from receipt of this Resolution, a copy of the documents requested by the CHR, particularly:

1) The profile and Summary of Information and pictures of T/Sgt. Jason Roxas (Philippine Army); Cpl. Maria Joana Francisco (Philippine Air Force); M/Sgt. Aron Arroyo (Philippine Air Force); an *alias* T.L. — all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the Armed Forces of the Philippines — and 2Lt. Fernando, a lady officer involved in the counter-insurgency operations of the 56th IB in 2006 to 2007;

2) Copies of the records of the 2007 ERAP 5 incident in Kamuning, Quezon City and the complete list of the intelligence operatives involved in that said

covert military operation, including their respective Summary of Information and individual pictures; and

3) Complete list of the officers, women and men assigned at the 56th and 69th Infantry Battalion and the 7th Infantry Division from January 1, 2004 to June 30, 2007 with their respective profiles, Summary of Information and pictures; including the list of captured rebels and rebels who surrendered to the said camps and their corresponding pictures and copies of their Tactical Interrogation Reports and the cases filed against them, if any.

These documents shall be released exclusively to this Court for our examination to determine their relevance to the present case and the advisability of their public disclosure.

j. **ORDER** the Chief of Staff of the Armed Forces of the Philippines and the Commanding General of the Philippine Army to be impleaded as parties, in representation of their respective organizations, separately from the original respondents impleaded in the petition; and the dropping of President Gloria Macapagal-Arroyo as party-respondent;

k. **REFER** witnesses Jeffrey T. Cabintoy and Elsa B. Agasang to the Department of Justice for admission to the Witness Protection Security and Benefit Program, subject to the requirements of Republic Act No. 6981; and

l. **NOTE** the criminal complaint filed by the petitioner with the DOJ which the latter may investigate and act upon on its own pursuant to Section 21 of the Rule on the Writ of *Amparo*.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and *Sereno, JJ.,* concur.

Peralta, J., on wellness leave.

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— In giving any private party any unwarranted benefits, advantage, or preference, damage is not required, it suffices that the accused has given unjustified favor or benefit to another in the exercise of his official administrative or judicial function. *(Id.)*

— The two (2) modes of commission need to be present at the time of the commission of the crime for the accused to be held liable. *(Id.)*

APPEALS

Appeal in special proceedings — The period of appeal shall be thirty (30) days, a record of appeal being required. (BPI Family Savings Bank, Inc. *vs*. Pryce Gases, Inc., G.R. No. 188365, June 29, 2011) p. 206

Factual findings of the trial court — Entitled to great weight on appeal and should not be disturbed except for strong and valid reasons, because the trial court is in a better position to examine the demeanor of the witnesses while testifying. (People *vs*. Campos, G.R. No. 176061, July 4, 2011) p. 315

Perfection of appeal — A party's appeal by record on appeal is deemed perfected as to him with respect to the subject matter thereof upon approval of the record on appeal filed in due time. (BPI Family Savings Bank, Inc. *vs*. Pryce Gases, Inc., G.R. No. 188365, June 29, 2011) p. 206

Right to appeal — Merely a statutory privilege, and, as such, may be exercised only in the manner and in accordance with the provisions of the law. (BPI Family Savings Bank, Inc. *vs*. Pryce Gases, Inc., G.R. No. 188365, June 29, 2011) p. 206

CITYHOOD LAWS

Enactment of — Do not amend the Local Government Code; said laws do not form integral parts of the Local Government Code but are separate and distinct laws. (League of Cities of the Phils. *vs*. COMELEC, G.R. No. 176951, June 28, 2011; *Carpio, J., dissenting opinion)* p. 119

— In no instance can foreigners obtain majority seats in the board of directors; the right of foreign investors to elect the members of the board cannot exceed the voting rights of 40% of the common shares, even though their ownership of common shares exceeds 40%. *(Id.)*

— Mere legal title is insufficient to meet the sixty percent (60%) Filipino owned "capital" required in the Constitution. (Gamboa *vs*. Finance Sec. Teves, G.R. No. 176579, June 28, 2011) p. 1

— Section 11, Article XII of the Constitution is self-executing and there is no need for legislation to implement it. *(Id.)*

— The intent of the framers of the Constitution was not to limit the application of the word "capital" to voting shares or common shares; by using the word "capital," the framers of the Constitution adopted the definition or interpretation that includes all types of shares, whether voting or non-voting. (Gamboa *vs*. Finance Sec. Teves, G.R. No. 176579, June 28, 2011; *Velasco, Jr., J., separate dissenting opinion*) p. 1

— The interpretation adopted by the majority places on the court the authority to define and interpret the meaning of "capital" which authority lies with Congress since it partakes of policy making founded on a general principle laid down by the fundamental law. (Gamboa *vs*. Finance Sec. Teves, G.R. No. 176579, June 28, 2011; *Abad, J., dissenting opinion*) p. 1

— The term "capital" in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors. (Gamboa *vs*. Finance Sec. Teves, G.R. No. 176579, June 28, 2011) p. 1

OMBUDSMAN

Rules of procedure — The Ombudsman is not precluded from ordering another review of a complaint for he or she may revoke, repeal, or abrogate the acts or previous rulings of a predecessor in office. (Alvarez *vs*. People, G.R. No. 192591, June 29, 2011) p. 216

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